

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

THE UNITED STATES OF AMERICA, :
PLAINTIFF : Case No. 5:13-CR-32-MTT
VS :
: June 10, 2014
: Macon, Georgia
JAMES HINTON, ET AL, :
DEFENDANTS. :

JURY TRIAL
Volume 2 of 10

BEFORE THE HONORABLE MARC TREADWELL
UNITED STATES DISTRICT JUDGE, PRESIDING

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1 MR. JARRARD: Today we are going to try to see
2 if this will work.

3 THE COURT: We have one juror this morning who
4 has informed us that her daughter is giving birth. It
5 seems like that's something that would have come up during
6 the course of the questionnaire, but it did not. I don't
7 know any details other than that. I don't see an
8 alternative other than to excuse her. The juror is Wendy
9 Juanita Floyd. Does anybody have any thoughts on that?

10 MR. CHRISTIAN: Not for the government, Your
11 Honor. Not much that can be done I suppose.

12 THE COURT: No. I don't -- maybe she is
13 premature, I don't know, but in any event it didn't come
14 up. It's a surprise, I gather, to all of us, but if she's
15 with her daughter in the hospital, she is not going to be
16 with us. So we will excuse Ms. Floyd. Are we still
17 waiting on one juror?

18 SECURITY OFFICER: Yes, sir.

19 THE COURT: Mr. Christian, you can put your
20 first witness in the stand this morning.

21 MR. CHRISTIAN: Okay. Thank you, Your Honor.

22 THE COURT: All right. We're all present, and
23 I'm going to let Mr. Christian bring in his first witness,
24 and we can bring the jury in.

25 MR. WOLFE: Judge, I just wanted to let you know

1 we're going to go in the same order today if that suits
2 you.

3 THE COURT: Good.

4 MR. WOLFE: Same order. It would be Mr.
5 Jarrard, Mr. Fox and then Wolfe.

6 (JURORS ENTER COURTROOM)

7 THE COURT: Okay. Good morning, ladies and
8 gentlemen. As I told you yesterday, I am going to begin
9 each morning by asking you this question: Did anybody
10 have any difficulty with regard to the instructions that I
11 gave you yesterday about not allowing yourself to be
12 exposed to any information about the case?

13 Very good. A bit of news. You may have noticed
14 that there's only -- that there's one fewer of you today.
15 Ms. Floyd's daughter had a baby this morning. That
16 obviously takes priority. So we've excused Ms. Floyd so
17 that she can be with her daughter. Apparently she was the
18 only one who was able to assist her with this.

19 All right. The government's first witness is on
20 the stand. Ms. Boyd, you may proceed.

21 COURTROOM DEPUTY: Do you solemnly swear the
22 testimony you are about to give in the case shall be the
23 truth, the whole truth and nothing but the truth, so help
24 you God?

25 THE WITNESS: I do.

1 COURTROOM CLERK: Will you please state and
2 spell your name for the record.

3 THE WITNESS: Yes, ma'am. My name is Linda,
4 L-I-N-D-A (spelling), Hamsley H-A-M-S-L-E-Y (spelling).

5 LINDA HAMSLEY

6 Witness, having first been duly sworn, testified on

7 DIRECT EXAMINATION

8 BY MS. BOYD:

9 Q. Good morning, Ms. Hamsley.

10 A. Good morning.

11 Q. Where do you work?

12 A. I currently work at Southwest Georgia Primary Care
13 in Ellaville, Georgia.

14 Q. What do you do there?

15 A. I'm a family nurse practitioner, and I provide
16 primary care services for families, similar to a general
17 practitioner.

18 Q. Did you work for the Flint River Hospital in
19 December, 2010?

20 A. Yes.

21 Q. What was your title then?

22 A. Family nurse practitioner. At the time I was
23 emergency room, emergency care provider.

24 Q. Did you treat an inmate named Terrance Dean on
25 December 16th, 2010?

1 A. Yes.

2 Q. I want to ask you more about your treatment of Mr.
3 Dean, but first I'd like to ask you a few questions about
4 your experience.

5 A. Yes, ma'am.

6 Q. How long have you been a nurse practitioner?

7 A. Eight years.

8 Q. Prior to becoming a nurse practitioner, what type of
9 work did you do?

10 A. I've been a registered nurse a total of 21 years, as
11 I'm still a registered nurse. For the last eight years
12 I've been a nurse and nurse practitioner.

13 Q. What training did you receive in order to be a nurse
14 practitioner?

15 A. I received an Associate's degree in nursing and then
16 a Bachelor's degree and later went on to receive a
17 Master's degree in nursing. And then took state boards
18 and became certified by the American Association of Nurse
19 Practitioners and another accrediting organization.

20 Q. What were your duties in December 2010 as a nurse
21 practitioner at Flint River Hospital?

22 A. I provided emergency -- primary emergency care
23 services similar to what a physician provides under the
24 supervision of a physician.

25 Q. I want to turn your attention now to a patient named

1 Terrance Dean. You said earlier that you treated him on
2 December 16th, 2010?

3 A. Yes.

4 Q. How did you come to treat Terrance Dean on
5 December 16th, 2010?

6 A. He was brought to Flint River emergency room on that
7 day, and I was the provider on duty.

8 Q. How had Mr. Dean been brought to you at Flint River
9 that day? Do you know how he arrived?

10 A. By ambulance, emergency medical services.

11 Q. Where had Mr. Dean been brought from?

12 A. Macon State Prison.

13 Q. When Mr. Dean arrived in the emergency room was he
14 able to tell you what happened to him?

15 A. No, ma'am.

16 Q. When he arrived in the emergency room was he able to
17 walk or support himself on his own?

18 A. No.

19 Q. Based on your observations of Mr. Dean, what kind of
20 injury did he have?

21 A. The most obvious injury was a head injury and with
22 his behavior it seemed to confirm that.

23 Q. What visible injuries did Mr. Dean have that
24 indicated to you that he had a head injury?

25 A. He had a large -- about fist size, my fist, about,

1 you know, a small female fist-sized hematoma on his
2 forehead, on his head. That was the most obvious injury.

3 Q. Could you please tell the jury what a hematoma is?

4 A. Yes, ma'am. It is a large bruise.

5 Q. What other symptoms did Mr. Dean show that were
6 consistent with a head injury?

7 A. He was not responsive in the way that you think of a
8 person speaking and answering questions appropriately. He
9 had unequal pupils. One pupil was larger than the other.
10 The other was, what we call, fixed and dilated which means
11 it was just -- it was just blown, big and didn't respond
12 to the light, and the other had a sluggish reaction. He
13 was not able to answer questions. He exhibited posturing
14 and when posturing -- if I might kind of show, it's where
15 the arms begin to -- at times he would flail his arms and
16 at other times his arms would posture inwards, and that is
17 a sign that the brain has been injured.

18 Q. Now, I'm just going to describe now for the court
19 reporter what you just did with your arms. So you drew
20 your arms in towards each other?

21 A. Yes, ma'am.

22 Q. And raised your shoulders?

23 A. Right, yes, ma'am.

24 Q. And is that how you saw Mr. Dean that day?

25 A. At times, yes, ma'am.

1 Q. What information did you have regarding how Mr. Dean
2 was injured when you treated him?

3 A. That he was -- he was assaulted with an unknown
4 object was what we were told.

5 Q. Based on what you saw that day, how would you
6 describe the seriousness or severity of the head injury
7 that Mr. Dean had?

8 A. Because of the posturing -- usually with posturing,
9 and we also have a scale that's called the Glasgow Coma
10 Score, and what the maximum score you can have -- for
11 example, most people in this room would have a score of
12 15, and his score was a 5. If the score is below 7 or 8
13 you become concerned about respiratory and cardiac arrest.
14 So his was 5, and that was very serious I would say.

15 Q. What did you do to test or determine what Mr. Dean's
16 Glasgow Coma Score was?

17 A. The Glasgow Coma Score gives a score from, I think
18 it's 1 to 5 on certain -- on three different areas of
19 neurological or brain function, and it tests -- the person
20 doing the exam tests eye response; they test verbal
21 response, like speaking, and they also look for motor
22 response.

23 Q. Can you tell the jury what Mr. Dean's eye response
24 was that day?

25 A. He -- as I mentioned his pupils were unequal. One

1 was blown, the other was sluggish response to light. When
2 the light shines in the pupil the pupils adjust according
3 -- if you walk in the sun, you know, your pupils get
4 smaller, but his were inconsistent with each other.

5 Q. What about Mr. Dean's verbal response?

6 A. There was no verbal response at all. He was not
7 speaking or answering questions.

8 Q. What about Mr. Dean's motor response?

9 A. He was not able to cooperate. He was not able to
10 follow commands or instructions at all.

11 Q. Was the staff at Flint River Hospital able to fully
12 address Mr. Dean's injuries that day?

13 A. No, ma'am.

14 Q. What did you do in light of the severity of his
15 injuries?

16 A. We stabilized the patient and -- well actually we do
17 our best to stabilize the patients for transport. There
18 are times when you are not able to stabilize a patient,
19 but you have to get them out of -- it's a small rural
20 community hospital. We don't have neurological services
21 there. So we do our best to get them safe, when I say
22 stabilize, get them as safe as we can in order to transfer
23 them to a larger facility.

24 Normally they're transferred to either Macon -- the
25 Trauma, Level One Trauma Center here in Macon or Atlanta

1 Medical Center.

2 So in order to stabilize the patient we had to
3 intubate him. As I said, with a Glasgow Coma Score below
4 eight and the posturing you become concerned about
5 respiratory arrest. So he had to be intubated, which
6 means that a tube is inserted in his airway, and he's
7 placed on a ventilator to breathe for him. Now, he was
8 breathing on his own, but as I mentioned with a coma score
9 that low you anticipate that the patient may stop
10 breathing, so you have to just -- that's one way to
11 stabilize them. But we just have to get him ready to go
12 to a larger facility where they had neurotrauma services.

13 Q. Did you record your observations of Mr. Dean and his
14 condition during the course of your treatment on December
15 16th, 2010?

16 A. Yes, ma'am.

17 Q. Do you regularly record your observations of
18 patients during treatment?

19 A. Yes, ma'am.

20 Q. Where do you normally record your patient
21 observations?

22 A. We call it a T-sheet. It's just an assessment form.

23 Q. Do the notes that you take and the observations that
24 you record and your medical forms accurately reflect the
25 patient's condition?

1 A. Yes, ma'am, as best as we can.

2 Q. Are the medical records that you complete stored by
3 the hospital?

4 A. Yes, ma'am.

5 Q. And are those medical records kept in the ordinary
6 course of hospital business?

7 A. Yes.

8 MS. BOYD: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 BY MS. BOYD:

12 Q. Ms. Hamsley, I just handed you what had been marked
13 for identification as Government's Exhibit 1 and
14 Government's Exhibit 2. First, I want to ask you some
15 questions about Government's Exhibit 1. Do you know what
16 Government's Exhibit 1 is, Ms. Hamsley?

17 A. Yes.

18 Q. What is it?

19 A. This is the assessment form for Terrance Dean that
20 was filled out on December 16th, 2010.

21 Q. Who completed the form?

22 A. I did.

23 Q. How do you know that you completed that form?

24 A. I recognize my handwriting, and I recognize the
25 information on the form.

1 MS. BOYD: Your Honor, the government offers
2 Government's Exhibit 1 into evidence.

3 THE COURT: Any objection?

4 MR. WOLFE: No, sir.

5 THE COURT: Hearing no objection from the
6 defense, it's admitted without objection.

7 BY MS. BOYD:

8 Q. Okay. I'm now going to point your attention, Ms.
9 Hamsley, to Government's Exhibit 2. What is Government's
10 Exhibit 2?

11 A. A physician's certification of medical necessity,
12 and this is for emergency or nonemergency transport.

13 Q. Is that part of the medical record that you
14 completed for Mr. Terrance Dean?

15 A. Yes.

16 Q. Who filled that out?

17 A. Esther Bailey, registered nurse. Either the nurse
18 or the physician or the mid-level provider can fill this
19 out.

20 Q. Okay. Now, I ask you to turn to page two of
21 Government's Exhibit 2. Who completed that portion?

22 A. I did. Yes, I see that.

23 MS. BOYD: Your Honor, the Government offers
24 Government's Exhibit 2 into evidence.

25 THE COURT: Any objection? Hearing none it is

1 admitted without objection.

2 MS. BOYD: Your Honor, may I publish
3 Government's Exhibit 1 to the jury?

4 THE COURT: Yes.

5 MR. WOLFE: Excuse me, Judge, if I may?

6 THE COURT: Yes.

7 MR. WOLFE: Before it's published, I have no
8 objection to it being admitted into evidence. I don't
9 know if there is any HIPAA release information from Mr.
10 Dean authorizing it to be shared with the public. She's
11 talked about what she did. I just object in that regard.

12 THE COURT: Well, it's been admitted without
13 objection, so it can be published to the jury.

14 BY MS. BOYD:

15 Q. Okay, Ms. Hamsley, can you see the form on the
16 screen in front of you, and do you have it in front of you
17 as well there?

18 A. Yes.

19 Q. I want to draw your attention to some of the
20 handwritten notes that you made on the T sheet for Mr.
21 Dean. You indicate that he had decorticate posturing?

22 A. Yes.

23 Q. Can you explain to the jury what decorticate
24 posturing is?

25 A. As I mentioned before and showed -- decorticate

1 posturing is where the arms twist inward in a manner like
2 this. There's decerebrate posturing and then decorticate
3 posturing, and it's a sign of a severe neurological
4 injury, or a brain injury.

5 Q. Okay. You also list on the form in your handwritten
6 notes that Mr. Dean was combative. Can you explain that
7 to the jury?

8 A. Yes. At times, he was not purposely trying to
9 injure anyone. None of his actions seemed purposeful but
10 he was flailing arms and kind of swatting in response to
11 pain. At times he would, you know, just kind of push you
12 away or swat, and that was the initial assessment. And
13 then we later, you know, just a few minutes later noticed
14 the posturing.

15 MS. BOYD: Your Honor, the Government asks for
16 permission to publish Government's Exhibit 2 to the jury?

17 THE COURT: You may.

18 BY MS. BOYD:

19 Q. Okay, Ms. Hamsley, I'm going to ask you a question
20 about page two of Government's Exhibit 2. What did you
21 note was Mr. Dean's diagnosis at the time of transfer?

22 A. Closed head trauma with significant neuro deficit.

23 Q. Can you explain to the jury what closed head trauma
24 is?

25 A. Yes, ma'am. Closed head trauma is where the head is

1 not cut open. There's no laceration or cut or -- there
2 are no brains that are showing or nothing is coming out,
3 but it's where the skin is intact and the head is closed,
4 but there's an injury because of the swelling. He had a
5 large area of swelling. And with significant neuro
6 deficit, that means that his brain response, his ability
7 to talk and respond and -- we look at cranial nerves, you
8 know, where we would check the pupils and the patient's
9 ability to follow commands, and those were -- there was a
10 deficit there. He was -- it was not functioning as it
11 should have.

12 Q. Ms. Hamsley, have you treated other inmate patients
13 from Macon State Prison before?

14 A. Yes.

15 Q. Can you estimate about how many patients you would
16 say you have treated from Macon State Prison that are
17 inmates?

18 A. I'm not certain, but I would say between, in
19 two-and-a-half years, between 30 to 50.

20 Q. How would you compare those patients to Mr. Dean in
21 terms of the severity of injuries that you saw?

22 A. Mr. Dean was the most severe that I had seen.

23 MS. BOYD: Thank you, Your Honor. No further
24 questions.

25 THE COURT: Mr. Jarrard?

1 MR. JARRARD: Your Honor, I don't have any
2 questions for Ms. Hamsley.

3 THE COURT: Mr. Fox has none. Mr. Wolfe?

4 MR. WOLFE: Thank you.

5 CROSS EXAMINATION

6 BY MR. WOLFE:

7 Q. Good morning. How are you, Ms. Hamsley?

8 A. Fine, how are you? Thank you.

9 Q. I'm well, thank you. My name is David Wolfe and I
10 represent Mr. Hinton over here. I'm going to ask you a
11 few questions, okay?

12 A. Sure.

13 Q. My understanding is that you were working at the
14 hospital in your normal capacity on December 16th of 2010,
15 correct?

16 A. Yes, sir.

17 Q. And would it be fair for me to understand that you
18 were in the emergency part of the hospital?

19 A. Yes, sir.

20 Q. All right. And that is part of what you're trained
21 to do, deal with things that come in, right?

22 A. Right.

23 Q. Now, when Mr. Dean was brought to the hospital, did
24 you get an alert from the ambulance or from anybody from
25 the prison or anything like that indicating to you what to

1 expect when Mr. Dean got there?

2 A. I don't remember.

3 Q. Okay.

4 A. I know the -- typically -- I don't remember that day
5 if we had -- typically the EMS would call on the radio and
6 let us know what was coming. Most of the time the nurse
7 answers the call on the radio, and then they call me on
8 the phone in my room.

9 Q. That's fine. But you don't have anything written in
10 the notes that you just alluded to which were included in
11 the State's Exhibits Numbers 1 and 2 which reflect that
12 you had prior specific information as to what you were in
13 store for?

14 A. Right.

15 Q. All right. And when an inmate, or any person for
16 that matter, comes to the emergency room, I guess the
17 first thing that needs to be done is an assessment of what
18 you observe injury wise, correct?

19 A. Yes, sir.

20 Q. All right. And the way I understand your testimony
21 this morning, when you observed Mr. Dean -- let me finish
22 the question -- there were no significant injuries except
23 for the woman's fist-sized hematoma on the right side of
24 his head, correct?

25 A. Correct.

1 Q. Now, my understanding from reading all the records
2 that what was on the side of his head was called a scalp
3 hematoma; is that correct?

4 A. I think -- I don't know. I don't have that, you
5 know -- that sounds right.

6 Q. That's what it is though, correct?

7 A. Yes, sir.

8 Q. All right. And my understanding is that with regard
9 to the scalp area, if in fact there were a laceration, it
10 bleeds quite profusely because there are many -- there are
11 more blood vessels there than in other aspects of the
12 body, correct?

13 A. Yes, sir.

14 Q. And the way I understand the scalp hematoma in this
15 instance was that there was a severe bruising to the right
16 side of his head, correct?

17 A. Right.

18 Q. And as a result, many blood vessels in the right
19 side of his head were burst and damaged and destroyed in
20 many respects?

21 A. Correct, I'd say.

22 Q. And when the blood starts to flow from those bursted
23 blood vessels it will start to pool, and it creates a lump
24 or a bump on the scalp, correct?

25 A. Right, yes, sir.

1 Q. And the body, the way I understand it, correct me if
2 I'm wrong, sends fluid to the area in order to try to
3 compress the blood vessels to stop the bleeding, right?

4 A. Yes, sir, right, the acute inflammatory process.
5 Yes, sir.

6 Q. Okay. Cool. And so as a result of the burst blood
7 vessels you have the hematoma which was most obvious to
8 you, right?

9 A. Yes, sir.

10 Q. Okay. And the way I understand your testimony then,
11 after that, you started to do the other assessments that
12 come along with -- is it called a Glasgow Score?

13 A. Yes, sir.

14 Q. And -- I always get confused between subjective and
15 objective -- but is the Glasgow Score something you
16 calculate?

17 A. It is, yes, sir.

18 Q. Okay. And while I'm not minimizing your expertise
19 and skills when it comes to three areas, the eyes, the
20 verbal, and the motor, you give an assessment of a 1 to 5
21 for each?

22 A. Correct.

23 Q. And then it's --

24 A. And the nurse does too. We --

25 Q. I'm sorry.

1 A. The nurse does as well.

2 Q. Sure. And then there's a calculation done and out
3 of 15 y'all's subjective calculation was that he was about
4 a 5 out of 15 which has him in the lower group?

5 A. Yes, sir.

6 Q. And -- now, I think you also said that in observing
7 the injury that it was consistent with being struck in the
8 head with an object, correct, or is that your testimony?
9 Was that your belief?

10 A. It was consistent with a blow to the head or being
11 struck with an object, but we were also given -- and I
12 don't have who -- who said this, but the chief complaint
13 was hit on the head, unknown object.

14 Q. Okay. And you believed that the injury that you
15 observed and his manifestations were consistent with that,
16 correct?

17 A. Correct, yes, sir.

18 Q. And so would it be fair for me to assume that if it
19 was consistent with that, it would also be consistent with
20 somebody being, for example, lifted up and dropped on his
21 head, if his head struck a concrete floor?

22 A. That's possible, yes, sir.

23 Q. Or, even better, if somebody was thrown to the floor
24 with their hands behind their back and their head hit
25 first, it would be consistent with that also?

1 **A.** Yes, sir.

2 MR. WOLFE: Thanks for coming in today.

3 THE COURT: Ms. Gomez?

4 CROSS EXAMINATION

5 BY MS. GOMEZ:

6 **Q.** Good morning, Nurse Hamsley. My name is Debra Gomez
7 and I represent Mr. Lach, the gentlemen on the far right.
8 I have a few specific questions for you. And you also
9 said that you conducted a physical assessment of Mr. Dean
10 from head to toe?

11 **A.** Yes, ma'am.

12 **Q.** Okay. Would you please tell the members of the jury
13 what exactly that consists of, the assessment from head to
14 toe?

15 **A.** Okay. The very first things that we look at are
16 airway breathing circulation. Those -- when we have an
17 emergent situation, just immediate -- immediately those
18 were intact. The airway breathing circulation, those were
19 fine. The next thing, when you have a suspicion of a head
20 injury which was pretty obvious with the hematoma to the
21 head, what you do is conduct a cranial nerve assessment.
22 And with the cranial -- cranial nerves are the
23 manifestation of how well the brain is working. That
24 includes, as I mentioned before, pupil -- pupillary
25 reaction and the ocular movements. We ask, you know, in a

1 normal cranial nerve exam you would say follow my finger
2 with your eyes and would have the patient puff their
3 cheeks and, you know, squeeze your hands to make sure that
4 everything is equal. That is part of the cranial nerve
5 assessment.

6 And then, listen to, of course first -- next we
7 would assess the -- for crepitus in the neck to make sure
8 there's not a neck injury. Of course look at the head,
9 you know, to see if any other injuries are on the head.

10 Q. Well, you've describe the head injury already --

11 A. Right. Okay.

12 Q. -- but there was no neck injury?

13 A. Right, I didn't see a neck injury.

14 Q. Okay. Take us from the neck down.

15 A. Okay. And then listen to the lung sounds. You want
16 me to tell you what I found? I mean, well, I guess I can
17 just look at my page.

18 Q. Well, basically what I'm asking you to do is just
19 tell us in general what a head to toe assessment is?

20 A. Okay. Listen to lung sounds, heart sounds, of
21 course with suspected trauma you want to palpate or feel
22 the chest to see -- what you are feeling for is a crepitus
23 which is a crunching sound, if there could be any injury
24 to the ribs, cracked ribs.

25 Q. If you could stop right there.

1 A. Okay.

2 Q. Okay. As specific to Mr. Dean, your records do not
3 indicate there being any cracked ribs or any blunt force
4 trauma to his ribs; is that correct?

5 A. That's correct, yes.

6 Q. Okay. Go ahead.

7 A. And then abdomen, you assess the abdomen, listen to
8 -- with a stethoscope listen for any bowel sounds or lack
9 of bowel sounds. You want to -- when I say palpate, I
10 mean press the abdomen and with trauma you are assessing
11 for a board-like -- sometimes if there's abdominal trauma
12 you'll feel a board-like -- I didn't feel anything like.
13 His abdomen was normal.

14 Q. So let me stop you so we make sure we make that
15 plain. As specifically as to Mr. Dean there was no
16 indication of blunt force trauma according to your medical
17 records?

18 A. To the abdomen.

19 Q. To the abdomen.

20 A. Right, none.

21 Q. Thank you. Go ahead.

22 A. Okay. And then the pelvis as well, you would do a
23 pelvic tilt or push, and we just try to elicit a pain
24 response there, but I didn't see any trauma to the pelvis.

25 Q. So I'll stop you again. Specific to Mr. Dean there

1 was absolutely no trauma that you saw to the pelvis area
2 either?

3 A. Correct. And then you look at the extremities, you
4 know, arms, which is their arms and legs, fingers and
5 toes, hands and feet. And there was nothing obvious
6 there.

7 Q. No blunt force trauma to the extremities, meaning,
8 as you said, his hands, his feet that you could see?

9 A. Right, yes, ma'am.

10 Q. All right. Do you also specifically check the back
11 of the person?

12 A. We do.

13 Q. Okay. And can you tell us what you found
14 specifically as to Mr. Dean, if anything?

15 A. It was unremarkable, no abnormalities.

16 Q. When you do the back area of Mr. Dean's body, would
17 that also include you doing the side of his body also,
18 both sides?

19 A. Yes, ma'am.

20 Q. Okay. And as to Mr. Dean you noted no blunt post
21 trauma in your records either -- to either his left side
22 or his right side; is that correct?

23 A. That's correct.

24 MS. GOMEZ: All right. Thank you.

25 THE COURT: Mr. Hogue?

1 MR. HOGUE: No questions.

2 THE COURT: Mr. Pate?

3 MR. PATE: No questions.

4 THE COURT: Thank you. Any redirect?

5 MS. BOYD: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. BOYD:

8 Q. Hi, Ms. Hamsley. I just want to follow up and ask
9 you a couple of questions.

10 A. Yes, ma'am.

11 Q. Mr. Wolfe asked you whether or not Mr. Dean's
12 injuries were consistent with different types of trauma.
13 Do you know, sitting here today, what happened to Mr.
14 Dean, how he came to the hospital in that condition?

15 A. All -- I mean, all I know is that he was hit on the
16 head with an unknown object. That was the -- that's all I
17 can really say from my records, is that he was hit on the
18 head with an unknown object. But I do not know -- and if
19 I might say -- when patients are assaulted, if they come
20 from the home environment, we do have to call the -- we
21 have to ask questions, you know, who did this, for our own
22 safety because we don't want them to march into the
23 emergency room and injure us, and also because we have to
24 report that legally. But with the prison we did not ask a
25 lot of questions about who might of, or how that might

1 have happened because, for one, we were safe. We knew
2 that we were guarded from whoever might have done an
3 injury, and then -- but it was not handle -- we didn't
4 have to handle it legally.

5 Q. Okay. So it's fair to say that you don't know
6 exactly how Mr. Dean --

7 A. I don't know exactly --

8 Q. --was injured?

9 A. -- but I do -- all I can say is that I documented
10 that he was hit on head with unknown object.

11 Q. Okay. You were asked by Ms. Gomez about your
12 assessment of Mr. Dean from head to toe. What would you
13 say was the focus of your treatment of Mr. Dean that day?
14 Which part of his body?

15 A. His head, most definitely.

16 MS. BOYD: Thank you. No further questions,
17 Your Honor.

18 THE COURT: Thank you, Ms. Hamsley. Mr. Wolfe?

19 MR. WOLFE: Just briefly, Judge.

20 RE CROSS EXAMINATION

21 BY MR. WOLFE:

22 Q. But you do do a total assessment because you don't
23 want to miss anything even though the most apparent injury
24 was the hematoma to the head?

25 A. Correct.

1 MR. WOLFE: Thank you.

2 THE COURT: Thank you, Ms. Hamsley. You may
3 step down. May this witness be excused?

4 MS. BOYD: Yes, Your Honor.

5 MR. JARRARD: Yes, Your Honor.

6 THE COURT: All right. You are excused. Thank
7 you. Mr. Christian, you may call your next witness.

8 MR. CHRISTIAN: The Government calls Emmett
9 McKenzie.

10 DEPUTY CLERK: Do you solemnly swear that the
11 testimony you are about to give in this case shall be the
12 truth, the whole truth, and nothing but the truth, so help
13 you God?

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: Will you please state your
16 name and spell your name for the record.

17 THE WITNESS: Emmett McKenzie, E-M-M-E-T-T
18 (spelling), M-C-K-E-N-Z-I-E (spelling).

19 **EMMETT MCKENZIE**

20 Witness, having first been duly sworn, testified on

21 DIRECT EXAMINATION

22 BY MR. CHRISTIAN:

23 Q. Good morning, Mr. McKenzie.

24 A. Good morning.

25 Q. Where are you from?

1 A. Montezuma, Georgia.

2 Q. Where are you working right now?

3 A. I work as a water and waste water operator for the
4 City of Montezuma and I work as a part time associate for
5 Dollar General, Incorporated out of Oglethorpe.

6 Q. Have you served as a correctional officer before?

7 A. Yes, sir.

8 Q. How long did you serve in corrections?

9 A. Roughly about ten years.

10 Q. What's the highest rank you reached in corrections?

11 A. Lieutenant.

12 Q. Did you serve at Macon State Prison?

13 A. Yes, sir.

14 Q. What was your highest rank at Macon State?

15 A. Sergeant.

16 Q. At Macon State did you ever serve on the
17 Correctional Emergency Response Team?

18 A. Yes, sir.

19 Q. Is that also called CERT?

20 A. Yes, sir.

21 Q. When did you serve on the CERT team?

22 A. From 2007 to 2009.

23 Q. What are some of CERT's duties generally?

24 A. Investigations, search of contraband from inmates as
25 well as staff, weapons and just assisting with the daily

1 operations of the institution, filling in voids wherever
2 needed.

3 Q. What type of uniform did CERT wear?

4 A. Gray BTUs, black boots, black T-shirt, and a black
5 hat with the emblems of CERT on it.

6 Q. Did anybody else at Macon State Prison, any other
7 officer, wear that kind of uniform?

8 A. No, sir.

9 Q. Who supervised CERT?

10 A. CERT sergeant.

11 Q. Who supervised the CERT sergeant?

12 A. The deputy warden.

13 Q. When did you serve at Macon State Prison? What
14 years?

15 A. From November 2002 to August 2012.

16 Q. So you were working at Macon State Prison then on
17 December 16th, 2010?

18 A. Yes, sir.

19 Q. Were you on CERT at the time?

20 A. No, sir.

21 Q. What was your duty or your assignment on
22 December 16th, 2010?

23 A. I was a shift supervisor.

24 Q. Did you see an inmate named Terrance Dean on
25 December 16th, 2010?

1 A. Yes, sir.

2 Q. Where's the last place in Macon State Prison you saw
3 inmate Terrance Dean on December 16th, 2010?

4 A. In the gym.

5 Q. Who was Dean with when you saw him in the gym?

6 A. The CERT team.

7 Q. Did you see Terrance Dean again on December 16th,
8 2010?

9 A. Yes, sir.

10 Q. When did you see him next, where was he?

11 A. At Flint River Community Hospital.

12 Q. Was Dean injured when you saw him in the gym with
13 the CERT officers?

14 A. No, sir.

15 Q. Was Dean injured when you saw him at the hospital?

16 A. Yes, sir.

17 Q. Let's go back then to the start of your shift on
18 December 16th, 2010, and work up to you seeing Dean in the
19 hospital. What was your rank on December 16, 2010?

20 A. Sergeant.

21 Q. Does that mean you're a supervisor?

22 A. Yes, sir.

23 Q. Who were you supervising?

24 A. First shift, the first shift officers.

25 Q. Did you respond to a code three on December 16th,

1 2010?

2 A. Yes, sir.

3 Q. What is a code three?

4 A. That's when an inmate is assaulting an officer.

5 Q. Where generally was the code three?

6 A. In unit E-2.

7 Q. What kind of unit is E-2?

8 A. It's --

9 Q. Is it a housing unit?

10 A. Yes. Yes, sir.

11 Q. What did you find generally when you reached the
12 scene of the code three?

13 A. Officers responded down there to the scene, a bunch
14 of inmates all over the building, staff members trying to
15 get the building locked down and trying to locate the
16 inmate that was -- had did the assault.

17 Q. Did you see the officer who was involved in the code
18 three?

19 A. Yes, sir.

20 Q. What was the officer's name?

21 A. Officer Walden.

22 Q. What was your understanding of who had -- who had
23 been assaulted?

24 A. It was my understanding that Officer Walden had been
25 assaulted.

1 Q. And who was your understanding as to the person who
2 had assaulted Officer Walden?

3 A. Inmate Dean.

4 Q. When you -- did you see Terrance Dean in the dorm,
5 in the housing unit?

6 A. Yes, sir.

7 Q. Who was he with when you saw him?

8 A. The CERT team, getting ready to leave out.

9 Q. What was Inmate Dean doing when he was with the CERT
10 team?

11 A. He was walking out. He was basically talking. He
12 was like, hmm, y'all ain't fixing to handcuff me in the
13 building or whatever.

14 Q. Was he handcuffed when you saw him in the dorm?

15 A. No, sir.

16 Q. Was he standing?

17 A. Yes, sir.

18 Q. Was he standing on his own power?

19 A. Yes, sir.

20 Q. Did he appear to have any injuries, visible injuries
21 when you saw Terrance Dean in the housing unit?

22 A. Not that I could tell.

23 Q. Any apparent injuries to his head or face that you
24 saw?

25 A. Not that I could see.

1 Q. Did you see Officer Walden that morning, or that
2 day?

3 A. Yes.

4 Q. Did he appear to have any visible injuries when you
5 saw him?

6 A. He was flustered in the face or what -- I guess from
7 the altercation but nothing other than that.

8 Q. Did you ask him if he was okay?

9 A. Yes.

10 Q. How did he respond?

11 A. He said he was all right.

12 Q. What did you do from there, from the housing unit?

13 A. Walked outside -- well, the instruction was given to
14 go get the pepper ball gun. So at that time when we got
15 ready to walk outside we were all in the sally port and
16 the sally port door leading to the control room got
17 popped, I guess, by mistake or whatnot so I stepped in and
18 that's when I asked -- I closed the door, the CERT team
19 left out with the inmate and that's when I asked Officer
20 Walden was he okay or whatnot, and he said yes. I told
21 them to escort him up to medical as soon as they get the
22 inmate across the yard. At that --

23 Q. Based -- let me stop you for a second. Based on
24 your knowledge of Macon State policies and your
25 understanding from working at Macon State what was your

1 understanding of where CERT was going to take Inmate Dean?

2 A. Across the yard, through the gym, into medical, and
3 then down to the lockdown unit.

4 Q. As a former CERT member yourself, why was CERT
5 taking Inmate Dean to the hospital -- I mean to the
6 medical unit?

7 A. You take him to the medical unit that way -- if for
8 instance an inmate gets down in the lockdown unit and says
9 something is wrong with them, we can already have verified
10 that we had him checked by medical to say that they were,
11 you know, okay, or in good physical condition when they
12 went down there or whatnot.

13 Q. So the inmate has got to be checked by the medical
14 unit before he goes to the lockdown unit?

15 A. Yes.

16 Q. And that's to make sure that he doesn't have any
17 injury when he goes to the lockdown unit?

18 A. Yes.

19 Q. What is the lockdown unit? Is that like solitary
20 confinement, segregated housing?

21 A. Yes.

22 Q. You said you saw Dean being escorted by CERT?

23 A. Yes.

24 Q. Where did you see Dean being escorted? Where is the
25 first place you saw Dean being escorted by CERT outside

1 the dorm?

2 A. Across the yard.

3 Q. Now where do they go from -- where did CERT and Dean
4 go from the yard?

5 A. To the gym.

6 Q. As they approached the gym did you see anybody from
7 CERT with a handheld video camera recording the escort?

8 A. They had them but the way they were holding them
9 kind of like iffy about the recording or what not.

10 Q. I'm sorry, what's the last thing you said?

11 A. I said the way they were holding them was kind of
12 iffy about whether they were recording it or not.

13 Q. So you couldn't -- it didn't look to you like they
14 were recording it?

15 A. No, not to me.

16 Q. Now what's your understanding as a former CERT
17 officer yourself about what the CERT team was supposed to
18 do with those handheld video cameras as they were
19 escorting the inmate from the dorm to medical?

20 A. Hmm, you were supposed to, hmm, video record
21 everything from -- from the point of the incident all the
22 way down to lockdown unit with the exception of when you
23 get to medical, if the inmate is being compliant you can
24 turn the cameras off, but if not, you're supposed to just
25 point them up to the sky because you're not suppose to

1 video tape the medical assistant or whatnot.

2 Q. So your understanding as a former CERT officer is
3 that CERT was supposed to record the inmate all the way
4 from the dorm to medical, correct?

5 A. (Nodding head).

6 Q. And then record the inmate from medical to lockdown?

7 A. Right.

8 Q. But they weren't supposed to record the treatment
9 that he's receiving while he's in medical?

10 A. No, that's some kind of confidentiality thing with
11 medical.

12 Q. But you understand otherwise was that CERT was
13 supposed to use those handheld cameras to record
14 everything?

15 A. Correct.

16 Q. And it looked to you like that probably wasn't
17 happening?

18 A. Right.

19 Q. What did you do when you saw CERT go to the gym
20 door?

21 A. At that time I was walking out of the E building.
22 Some inmates was on the sidewalk and I gave them some
23 instruction to go ahead and go back to their building or
24 whatnot, we had a situation going on. And once they
25 started going back I went across the yard and as I was

1 going across the yard, Thomas ran past me to go toward
2 main control. So that's when I saw some inmates over by
3 the kitchen and I went up there as well and gave them
4 instructions to come back down and that's when I went up
5 to the gym.

6 Q. Did you go into the gym?

7 A. Yes, sir.

8 Q. Who was in the gym when you went into the gym?

9 A. The CERT team.

10 Q. What about Inmate Dean?

11 A. Yes, sir.

12 Q. Did you hear anyone from CERT say anything as you
13 walked into the gym?

14 A. As I walked in -- got ready to walk into the gym I
15 heard somebody say, "We're about to handle this now."

16 Q. Do you remember which CERT officer said, "We're able
17 to handle this now?"

18 A. No, sir.

19 Q. Let's talk then about what you saw of the CERT team
20 and Dean when you went into the gym. Who specifically do
21 you remember seeing in the gym, which officers?

22 A. Officer Douglass, Officer Bolden, Officer Redden,
23 Officer Lach, Officer Wimbush, and Officer Rushin.

24 Q. Do you know those officers?

25 A. Yes, sir.

1 Q. Do you see any of those men here today?

2 A. Yes, sir.

3 Q. Can you identify the officers that you saw in the
4 gym and that you see here today?

5 A. Yes, sir.

6 Q. Can you point them out by where they're seated in
7 the courtroom and what they're wearing?

8 A. Officer Rushin, a green shirt, plaid tie; Officer
9 Wimbush, white shirt; Officer Lach, beige shirt, on the
10 far end, right there.

11 MR. CHRISTIAN: Your Honor, may the record
12 reflect that Mr. McKenzie has identified Defendants Lach,
13 Rushin, and Wimbush.

14 THE COURT: It will reflect that.

15 BY MR. CHRISTIAN:

16 Q. You mentioned there were other CERT officers in the
17 gym as well. You said Douglass-Griffin?

18 A. Yes.

19 Q. And Willie Redden?

20 A. Yes.

21 Q. And who else?

22 A. Officer Bolden.

23 Q. Who was the supervisor for CERT at that time?

24 A. Sergeant Hall.

25 Q. Did you see Sergeant Hall in the gym at that moment?

1 A. I don't remember seeing him.

2 Q. Where were these officers, the CERT officers
3 relative to Dean when you saw them in the gym?

4 A. Hmm, Douglass and Redden had Inmate Dean in the
5 inter -- not interview, but escort position, basically
6 with him standing with his hands behind his back
7 handcuffed and they had his -- their hands on his forearm
8 and the rest of the guys were standing off to the
9 right-hand side.

10 Q. Was Dean handcuffed at the time?

11 A. Yes.

12 Q. Where were the cuffs, in the front or the back?

13 A. In the rear.

14 Q. What did you do at that point?

15 A. At that point I walked up to Inmate Dean, got my
16 finger, put it in his face and told him don't you be
17 putting your hands on my staff -- across his face.

18 Q. So you actually made contact with Dean's face?

19 A. Yes, sir.

20 Q. And you said you swiped it across his face?

21 A. Yes, sir.

22 Q. What did his head do when you swiped it across his
23 face?

24 A. It turned a little bit like this.

25 Q. Again, what did you say to him?

1 A. Don't you be putting your hands on my staff.

2 Q. What happened after that?

3 A. After that Officer Redden threw Inmate Dean down and
4 punched him across the face.

5 Q. What did you do after you saw a CERT officer punch
6 Dean?

7 A. At that point I left.

8 Q. Why did you leave?

9 A. I didn't want any part of that.

10 Q. You say part of that, what did you think was going
11 to happen to Inmate Dean at that point?

12 A. More than likely be assaulted.

13 Q. As a sergeant at Macon State Prison what were your
14 duties at that point?

15 A. My duties were to stop that -- stop it.

16 Q. Stop who?

17 A. Stop Officer Redden.

18 Q. Why didn't you stop what was going to happen?

19 A. I just -- I guess I didn't want any part of it and
20 just wanted to get out of the area.

21 Q. Based on your training as a correctional officer did
22 you think that officers were allowed to beat an inmate to
23 punish him?

24 A. No.

25 Q. What kind of punishment could an inmate receive for

1 hitting an officer at Macon State?

2 A. Excuse me?

3 Q. What kind of punishment could an inmate receive for
4 hitting an officer? Could he be disciplined, the inmate?

5 A. Uh -- I'm not understanding like the -- to my --

6 Q. If an inmate hit an officer --

7 A. Right.

8 Q. -- what kind of punishment generally could the
9 inmate get? You said officers weren't allowed to beat
10 him. What kind of punishment could an inmate get?

11 A. Oh, okay. He can get institutional charges as well
12 as state and local charges put on him.

13 Q. State and local criminal charges?

14 A. Right.

15 Q. After you saw the CERT officer hit Dean and you
16 walked away where did you go?

17 A. Back down to E building. I walked out across the
18 yard and as I was going across the yard some inmates were
19 coming, I guess from the kitchen or whatever, because at
20 that point they started locking the whole institution
21 down. So there were some inmates out there in front of E
22 building with a couple of officers that they were trying
23 the pat search before they put them in the building, so I
24 assisted with that or whatnot and then I went back in E-2.

25 Q. You mentioned a pepper ball gun earlier?

1 A. Yes.

2 Q. What is a pepper ball gun?

3 A. It's like a -- it's a high -- it's like a paint ball
4 that shoots pepper powder in the ball form.

5 Q. And you said you were looking for the pepper ball
6 gun?

7 A. Sir?

8 Q. You said you were looking for the pepper ball gun?

9 A. I was initially going to get it but Thomas ran up
10 and got it.

11 Q. Did you ultimately get the pepper ball gun yourself?

12 A. Yes, sir.

13 Q. Where did you get it?

14 A. When I returned back to E-2.

15 Q. And E-2 is the housing unit, right?

16 A. Yes, sir.

17 Q. That was the scene of the initial incident, right?

18 A. Yes, sir.

19 Q. When you returned to E-2 did you talk to anybody in
20 that dorm?

21 A. It was a conversation with uh, myself, Mr. Blakley,
22 Mr. Bobbitt and Sergeant Hall.

23 Q. Who is Sergeant Hall?

24 A. He's the CERT sergeant.

25 Q. Did you know Sergeant Hall?

1 A. Yes.

2 Q. And you said you had a conversation with him?

3 A. Yes.

4 Q. What was your conversation with Sergeant Hall, Don
5 Blakely and Mr. Bobbitt?

6 A. Basically they were out there beating his butt, they
7 were out there whipping -- they were out there whipping
8 Inmate Dean's butt.

9 Q. I'm sorry?

10 A. They were out there whipping Inmate Dean's butt.

11 Q. What was the response when you said to these
12 officers, including Sergeant Hall, they're out there
13 whipping Dean's butt?

14 A. "Really. You think."

15 Q. Did anybody express any concern?

16 A. No, sir.

17 Q. Anybody do anything to try to stop it at that point?

18 A. No, sir.

19 Q. You mentioned Sergeant Hall being in that
20 conversation. Do you see Sergeant Hall in the courtroom
21 today?

22 A. Yes, sir.

23 Q. Can you point him out by his location and/or his
24 apparel?

25 A. Right there, gray shirt, no tie, eye glasses.

1 MR. CHRISTIAN: Your Honor, may the record
2 reflect the Defendant -- the Defendant, Christopher Hall
3 has been identified by Mr. McKenzie.

4 THE COURT: It will reflect that.

5 BY MR. CHRISTIAN:

6 Q. Where did you go from the E-2 dorm, from this
7 conversation with Sergeant Hall? Well, let me ask you
8 first before we leave that conversation. What's Don
9 Blakely's position at Macon State, or what was it at that
10 time?

11 A. Unit manager.

12 Q. What's a unit manager?

13 A. He basically oversees the housing units.

14 Q. A supervisor?

15 A. Yes, sir.

16 Q. What about Mr. Bobbitt, what was his position or
17 what was his position at Macon State at the time?

18 A. Unit manager.

19 Q. And that's a supervisor again?

20 A. Yes, sir.

21 Q. So your conversation was with three supervisors at
22 Macon State when you told them they're whipping his butt?

23 A. Correct.

24 Q. Where did you go from the E-2 dorm?

25 A. Hmm, up to main control.

1 Q. Did you learn that an ambulance was on its way to
2 Macon State?

3 A. Yes, sir.

4 Q. Now you had said you saw Officer Walden after the
5 code three, right?

6 A. Yes, sir.

7 Q. And you said that Officer Walden looked flustered in
8 the face?

9 A. Yes, sir.

10 Q. Did he appear to need an ambulance when you saw him?

11 A. No, sir.

12 Q. Had you seen Terrance Dean when you left Dean in the
13 gym with the CERT officers?

14 A. Yes, sir.

15 Q. Did he appear to need an ambulance when you left him
16 with the CERT officers?

17 A. Well, not at -- no, sir.

18 Q. Did you go to the hospital that day, December 16th,
19 2010?

20 A. Yes, sir.

21 Q. Which hospital was it?

22 A. Flint River Community Hospital.

23 Q. Why did you go to the hospital?

24 A. I had to go so that the CERT officers could be
25 relieved so they can come back and write their statements

1 about the incident.

2 Q. So there were CERT officers at the hospital?

3 A. Yes, sir.

4 Q. And you were relieving them so they could come back
5 and write their statement?

6 A. Yes.

7 Q. What statement is that?

8 A. I guess the statements about what they had done
9 during the incident or whatnot.

10 Q. Which officers did you see at the hospital?

11 A. It was Officer Douglass and Officer Bolden.

12 Q. Did you talk to Officer Bolden at the hospital?

13 A. Yes.

14 Q. What did he say to you?

15 A. I asked him was he all right -- was the inmate all
16 right, and he was like, yes, he's fine, he got what he
17 deserved.

18 Q. What did you observe of Dean's condition at the
19 hospital when you saw him?

20 A. Uh, he was just laying there, uh, unconscious with a
21 tube in his throat.

22 Q. What was your reaction when you saw this change in
23 Dean's condition?

24 A. My stomach dropped.

25 Q. You said your stomach dropped?

1 A. Yes.

2 Q. Why did your stomach drop?

3 A. That wasn't supposed to happen.

4 MR. WOLFE: I'm sorry, I didn't hear it.

5 THE WITNESS: That wasn't supposed to happen.

6 BY MR. CHRISTIAN:

7 Q. Did you have any concerns for yourself at that
8 point?

9 A. Yes.

10 Q. What concerns did you have for yourself?

11 A. Hmm, the overall fallout of everything, what might
12 possibly happen.

13 Q. What do you mean by that?

14 A. Uh, career wise, criminal wise, everything.

15 Q. When you say career wise, what do you mean by career
16 wise for yourself?

17 A. As far as me having to lose my job, something like
18 that.

19 Q. What about criminal wise, you said?

20 A. Yes.

21 Q. What did you mean by that?

22 A. Criminal wise, as far as this, period. I mean,
23 court, the possibility of being locked up, everything.

24 Q. So you thought you might end up here?

25 A. Exactly.

1 Q. When did you return next to Macon State?

2 A. Uh, I returned back that night but that was just to
3 bring back my little stuff or whatever, and turn in the
4 weapons and van.

5 Q. I'm going to show you -- if I may approach Your
6 Honor?

7 THE COURT: You may.

8 BY MR. CHRISTIAN:

9 Q. -- Government's Exhibit 4 and 4A.

10 MR. CHRISTIAN: I'm showing to defense counsel.
11 (Pause).

12 THE COURT: You can go ahead.

13 BY MR. CHRISTIAN:

14 Q. Okay. Mr. McKenzie, I'm showing you what has been
15 marked for identification as Government's Exhibits 4 and
16 4A. Do you see those in front of you?

17 A. Yes, sir.

18 Q. What are Government's Exhibit 4 and 4A?

19 A. They're my witness statements, the written and typed
20 copy.

21 Q. How do you know that 4 and 4A are your witness
22 statements?

23 A. Uh, these are the ones that, hmm, I wrote and signed
24 on.

25 Q. What date did you -- what date did you complete

1 these witness statements?

2 A. December 17th.

3 Q. The 17th of what month and year?

4 A. December.

5 Q. And what incident were these two statements in
6 reference to?

7 A. The incident out at unit E-2.

8 Q. Out at E-2?

9 A. Yes, sir.

10 Q. Involving who, just to be clear?

11 A. Inmate Dean.

12 Q. Inmate Dean. So it's for what happened in the
13 housing unit?

14 A. Yes, sir.

15 Q. With inmate Terrance Dean?

16 A. Yes, sir.

17 Q. You said that there's a written -- handwritten
18 statement and a typed statement?

19 A. Yes, sir.

20 Q. Can you explain why there's a handwritten version
21 and a typed version?

22 A. Well, the written version is basically, hmm, done
23 basically like, it's your written version of what you
24 wrote down and put on your witness statement. The typed
25 version is -- it looks more professional or whatnot so

1 they usually type -- type one up. That way when they
2 submit it to Internal Affairs or wherever it has to go for
3 processing or whatnot, it looks better and it's legible.

4 Q. Okay. Did you get a chance to review your typed one
5 before you signed it?

6 A. Yes.

7 Q. Are those two statements identical, 4 and 4A?

8 A. Pretty much, yes, sir.

9 Q. Is there anything that's not identical on those two
10 statements?

11 A. Not really. They're pretty much what they're
12 supposed to be.

13 MR. CHRISTIAN: Your Honor, I would move to
14 introduce Government's 4 and 4A and publish them for the
15 jury.

16 THE COURT: Any objection?

17 MR. WOLFE: No objection.

18 MR. FOX: No objection, Your Honor.

19 MR. CHRISTIAN: May I retrieve them, Your Honor?

20 THE COURT: There being no objections, they are
21 admitted without objection, and yes, you may retrieve
22 them.

23 BY MR. CHRISTIAN:

24 Q. All right, Mr. McKenzie, I'm showing you
25 Government's Exhibit 4 just so we can all follow along

1 here. This is your witness statement, correct?

2 A. Correct.

3 Q. Can you read it to the jury?

4 A. Okay. At 1404 hours a code three, officer needs
5 assistance, was called. I, Sergeant McKenzie, responded
6 to unit E-2 to assist with the situation. I then left the
7 building to go get the pepper ball gun because the inmate
8 did not want to lockdown. Officer Thomas retrieved the
9 pepper ball gun and I received it from him once I returned
10 to unit E-2 (reading).

11 Q. And Mr. McKenzie, does your witness statement
12 mention that you swiped your finger across Mr. Dean's face
13 in the gym?

14 A. No, sir.

15 Q. Does it mention that you had seen a CERT officer
16 throw down and punch Inmate Dean in the gym?

17 A. No, sir.

18 Q. And does it mention that you expected that CERT was
19 going to beat up Terrance Dean in the gym?

20 A. No, sir.

21 Q. And was your witness statement here completely
22 accurate?

23 A. No, sir.

24 Q. Now before I get to why you wrote a statement that
25 wasn't completely accurate -- and just for the record,

1 here's 4A just so everybody can see. Is this your
2 handwritten statement?

3 A. Yes, sir.

4 Q. Before we get to why you wrote that statement that
5 wasn't completely accurate, when did you write this
6 statement relative to when you had seen Dean in the
7 hospital.

8 A. I wrote that statement on the 17th, the next day.

9 Q. And who asked you to write a statement?

10 A. Mr. Blakley.

11 Q. Is that Unit Manager Blakely?

12 A. Yes, sir.

13 Q. Is that the same man you had the conversation with
14 where you said, "They're whipping his butt?"

15 A. Yes, sir.

16 Q. When you were writing this witness statement did you
17 have a conversation with Mr. Blakely?

18 A. Yes, sir.

19 Q. Where did he fit in your chain of command at Macon
20 State?

21 A. He was the unit manager, he was right below the
22 deputy warden.

23 Q. You said right below the deputy warden?

24 A. Yes, sir.

25 Q. What did Unit Manager Don Blakely say to you as you

1 were sitting down to write your witness statement?

2 A. He was like, I told the guys to come over here and
3 let's review the video cause this thing is going to go
4 federal and when it do their ass is going to be in the
5 ringer.

6 Q. When you say that Mr. Blakley said to you this thing
7 is going to go federal, what did that mean to you?

8 A. I -- what did it mean to me?

9 Q. Yes.

10 A. It meant to me the thing's getting worse by the
11 second.

12 Q. I'm sorry?

13 A. It meant to me that things are getting worse by the
14 second.

15 Q. Thing are getting worse by the second?

16 A. Yes.

17 Q. And by going federal what does that mean to you?
18 What does federal mean?

19 A. That meant it's big. That mean it's a big
20 situation.

21 Q. And you said that Mr. Blakley asked them to come
22 down and look at the video. What did that mean to you?

23 A. Uh, I guess that, uh -- it meant to me I guess
24 they're just trying to put -- they were going to put
25 something together on their own or whatnot and go from

1 there.

2 MR. WOLFE: I'm going to object to speculation
3 as to why Blakely had the other fellows come down and look
4 at the video.

5 THE COURT: Mr. Christian?

6 MR. CHRISTIAN: I just asked what it meant to
7 him, his understanding of what this conversation was
8 about as he sat down to write a witness statement that
9 he's already admitted was not completely accurate. It's a
10 statement in furtherance, Your Honor.

11 THE COURT: I'll sustain that objection. I
12 think he was speculating. If I understood what he said
13 correctly by what might have happened or might be in
14 somebody else's mind. I might have misunderstood him.

15 MR. CHRISTIAN: Well my question was: What did
16 it mean to you when you got this information in terms of
17 what impact did it have on him? It's the effect on the
18 listener, it's not what he thought other people were
19 doing. It's this is what he thinks the conversation is
20 about and this is why he's writing his false statement.

21 THE COURT: So the relevancy is to show why he
22 wrote the false statement?

23 MR. CHRISTIAN: Absolutely, Your Honor.

24 THE COURT: All right. I'll overrule the
25 objection.

1 MR. CHRISTIAN: Thank you, Your Honor.

2 BY MR. CHRISTIAN:

3 Q. Now, what impact did that conversation with Mr.
4 Blakley have on what you put in your witness statement?

5 A. I was like, I'm going to omit that little portion to
6 stay out of it.

7 Q. What portion were you omitting after your
8 conversation with Mr. Blakely?

9 A. The portion of me going to the gym and, uh, the
10 incident where, uh, I swiped my finger across Dean's face
11 and when I saw him get thrown to the ground and punched.

12 Q. Did you talk to Mr. Blakley specifically about the
13 escort video, the handheld camera video from the escort?

14 A. He said that, uh, he had been calling for the video
15 but they said they couldn't find it.

16 Q. And that's the handheld video they said they
17 couldn't find?

18 A. Correct.

19 Q. And when you saw CERT in the gym with Dean, did you
20 see anybody video taping the incident as Dean was thrown
21 to the ground and punched?

22 A. No, sir.

23 Q. And again what was your understanding of what CERT
24 was supposed to be doing with the handheld cameras at that
25 moment?

1 A. Video recording.

2 Q. After your conversation with Mr. Blakley did you
3 turn in this witness statement?

4 A. Yes.

5 Q. I want to turn now -- I'll take down this exhibit.
6 I want to turn now to a different subject. You met with
7 federal investigators for the first time on August 15th,
8 2012, right?

9 A. Yes, sir.

10 Q. That was for an interview with the FBI, right?

11 A. Yes, sir.

12 Q. At the beginning of that interview with the FBI, did
13 you admit that you had been in the gym with Terrance Dean?

14 A. No, sir.

15 Q. At the end of that interview you left, right?

16 A. Yes, sir.

17 Q. Had you told federal investigators when you left
18 what had happened to Dean in the gym?

19 A. No, sir.

20 Q. But then you came back a couple hours later that
21 same day, right?

22 A. Yes, sir.

23 Q. And you talked to federal investigators again?

24 A. Yes, sir.

25 Q. Did anybody make you come back?

1 A. No, sir.

2 Q. After you came back that day for the second
3 interview, on August 15th, did you testify the next day,
4 August 16th, under oath?

5 A. Yes, sir.

6 Q. And going in to testify that day did you understand
7 that you would not be charged for giving the FBI false
8 information the day before?

9 A. Yes, sir.

10 Q. But were you made any promises regarding any other
11 potential charges?

12 A. No, sir.

13 Q. Did you think you could be charged after you
14 testified under oath?

15 A. Yes, sir.

16 Q. What did you think would happen if you admitted what
17 you had done in the gym?

18 A. What do I think would have happened if I admitted
19 what I done in the gym?

20 Q. Yes.

21 A. I mean, I think maybe I have some relief.

22 Q. What did you decide to do about whether you were
23 going to testify or not?

24 A. I decided to go ahead and testify.

25 MR. FOX: Your Honor, I'm having a very

1 difficult time hearing.

2 THE COURT: Speak up, Mr. McKenzie.

3 MR. CHRISTIAN: If you could slide forward a
4 little bit Mr. McKenzie so we can hear you.

5 Q. Had anybody --

6 THE COURT: What was the last answer?

7 BY MR. CHRISTIAN:

8 Q. What did you decide to do that day?

9 A. I decided to testify.

10 Q. Had anybody from the FBI, the Department of Justice
11 made you any promises at that point when you went in to
12 testify back in 2012?

13 A. No, sir.

14 Q. You had not pleaded guilty, right?

15 A. No, sir.

16 Q. Hadn't made any deals?

17 A. No, sir.

18 Q. Had you even retained an attorney?

19 A. No, sir.

20 Q. Did you ask for anything in exchange for your
21 testimony?

22 A. No, sir.

23 Q. After you testified under oath did you enter a
24 guilty plea in Federal court?

25 A. Yes, sir.

1 Q. What year did you plead guilty?

2 A. 2012.

3 Q. What is your understanding of the offense that
4 you've pleaded guilty to?

5 A. It's a violation of civil rights.

6 Q. Have you signed a plea agreement with the United
7 States?

8 A. Yes, sir.

9 Q. Have you agreed to cooperate with the United States?

10 A. Yes, sir.

11 Q. What do you hope the prosecutors will do after you
12 testify?

13 A. Hopefully speak in my favor.

14 Q. And to your knowledge who will decide the sentence
15 you will receive?

16 MR. FOX: Your Honor, I'm -- could we have him
17 repeat the answer. We did not --

18 THE COURT: I can't hear you.

19 MR. FOX: I'm sorry, could you repeat the
20 answer. I couldn't hear him.

21 THE COURT: Okay. Yes, Mr. McKenzie, if they
22 can't hear you, you need to speak up so --

23 THE WITNESS: Okay.

24 MR. CHRISTIAN: Can you speak up a little bit
25 louder.

1 THE WITNESS: Yes, sir.

2 BY MR. CHRISTIAN:

3 Q. To your knowledge who's going to decide the sentence
4 that you will receive?

5 A. The judge.

6 Q. Now, you said that you pleaded guilty in 2012,
7 right?

8 A. Yes, sir.

9 Q. Before you pleaded guilty where were you working?

10 A. Uh, Dooly State Prison.

11 Q. And you had been working as a sergeant at Macon
12 State before, right?

13 A. Yes, sir.

14 Q. What rank were you going to be at Dooly?

15 A. Lieutenant.

16 Q. Is that a promotion from sergeant?

17 A. Yes, sir.

18 Q. What happened to that promotion?

19 A. Gone.

20 Q. Did you ultimately resign from Dooly?

21 A. Yes, sir.

22 Q. And now you have a felony conviction, right?

23 A. Yes, sir.

24 Q. So you went from a lieutenant at Dooly to now you're
25 a convicted felon because of this case?

1 A. Yes, sir.

2 Q. I want to turn now to a different subject, the
3 conversations that you had with Defendant Ronald Lach.
4 How do you know Ronald Lach?

5 A. I served with him on the CERT team and hung out with
6 him a couple of times.

7 Q. What was your relationship with Defendant Lach?

8 A. We were pretty good friends.

9 Q. You said you had socialized before?

10 A. Yes.

11 Q. You talked a lot about the force that he used on
12 other inmates?

13 A. We talked about the Dean incident.

14 Q. Okay. How did this conversation come about first?

15 A. We were at one of his friend's house and we was
16 outside just me and him, and we were just having a
17 conversation.

18 Q. What did Lach tell you that he and other officers
19 would do to an inmate who hit an officer?

20 A. He was like they were told to --

21 MS. GOMEZ: Your Honor, I have to object. May
22 we approach please?

23 (BENCH CONFERENCE).

24 MS. GOMEZ: Your Honor, I just want to be
25 clear. We've had a lot of discussions about us not being

1 allowed to go into previous incidences. We've been told
2 repeatedly you have to stick specifically to what's in the
3 indictment. And so he asked the question about other
4 inmates, what was -- he said you mean about Dean? Mr.
5 Christian then went back to this issue about other
6 inmates. So if you want to -- I think in turn this just
7 has to be limited to the four instances that have been
8 alleged in the indictment and not any of this outside
9 other stuff. But he isn't -- we're not allowed to bring
10 in any other incidences.

11 THE COURT: What I thought you were going to
12 say is that, of course, it does add him openness to the
13 door --

14 MS. GOMEZ: Correct.

15 THE COURT: -- which is what you've been
16 saying.

17 MS. GOMEZ: Correct. But what I'm saying is
18 that if he's going to do that --

19 THE COURT: Now you're saying you don't want
20 him to open the door.

21 MS. GOMEZ: No, no, no, Judge. I'm saying if
22 he's going that way, if he does that, that's why I'm up
23 here saying if he does that he's opening the door and I
24 want to warn him before he does it.

25 THE COURT: We don't have to have a bench

1 conference to decide that.

2 MS. GOMEZ: Okay.

3 THE COURT: If he wants to go somewhere with it
4 and then if it opens the door it opens the door.

5 MR. CHRISTIAN: Just to be clear, Your Honor,
6 if he's talking about inmates that are referred to in the
7 indictment those are other inmates. So, I don't think
8 that opens the door if he's talking about that kind of
9 incident.

10 THE COURT: Well, we're speculating right now.
11 If he asks about incidences other than the four incidence
12 obviously that's going to open the door.

13 MS. GOMEZ: Okay.

14 MR. CHRISTIAN: And I'm not asking about --

15 THE COURT: Subject to whatever the details
16 are.

17 MR. WOLFE: Well, actually he just said he's
18 only spoke to Lach about Dean so I'd object --

19 MS. GOMEZ: And then he asked the question
20 about --

21 MR. WOLFE: I'm going to object to leading.

22 THE COURT: We don't know what's going to
23 happen.

24 (BENCH CONFERENCE CONCLUDED)

25 BY MR. CHRISTIAN:

1 Q. All right, Mr. McKenzie, I asked you about a
2 conversation you had with Defendant Lach?

3 A. Right.

4 Q. And you said that conversation was about the Dean
5 incident?

6 A. Right.

7 Q. What did Defendant Lach tell you about what had
8 happened to Dean in terms of why officers had used force
9 on Dean?

10 A. Because, hmm, they were told that if an inmate were
11 to put their hands on an officer, they needed to take him
12 over to the gym and deal with him.

13 Q. What was your understanding what deal with him
14 meant?

15 A. Use force and assault him.

16 Q. In that same conversation did you and Defendant Lach
17 talk about a state investigation into Dean's injuries?

18 A. Yes. And he was, like, they don't have anything
19 because, hmm, Dean can't remember anything.

20 Q. I want to move now to other conversations that you
21 had about Terrance Dean. Did you ever talk to Deputy
22 Warden James Hinton about the Dean incident?

23 A. Once.

24 Q. Did you know Deputy Warden James Hinton at the time
25 of this conversation?

1 A. Yes.

2 Q. How did you know him?

3 A. He was a deputy warden over security.

4 Q. One of your supervisors?

5 A. Yes.

6 Q. Do you see him in the courtroom today?

7 A. Yes.

8 Q. Can you identify him by his location and his
9 clothing?

10 A. Right there --

11 MR. WOLFE: Judge, we'll stipulate. Stand up.
12 This is James Hinton.

13 A. Blue shirt, plaid tie.

14 MR. CHRISTIAN: Your Honor, may the record
15 reflect he's been identified?

16 THE COURT: He has been identified as Defendant
17 Dean -- Hinton, pardon me.

18 BY MR. CHRISTIAN:

19 Q. Now you said that Defendant Hinton was a supervisor
20 of yours at the time, right?

21 A. Yes, sir.

22 Q. Where was your conversation with Defendant Hinton?

23 A. In his office.

24 Q. At Macon State?

25 A. Yes, sir.

1 Q. What was his conversation -- what was his position
2 at the time of this conversation?

3 A. Deputy warden of security.

4 Q. When was this conversation relative to when
5 Mr. Hinton was out on medical leave?

6 A. It was after he came back.

7 Q. What did Defendant Hinton say to you about the Dean
8 incident?

9 A. It was basically like, he don't know why those guys
10 did it, you know, they shouldn't have did that. And, hmm,
11 that, hmm, if they would have came to him it wouldn't even
12 happened like that. He would have taken care of it.

13 Q. He would take care of it?

14 A. Yes.

15 Q. What did that mean to you, that conversation?

16 A. I guess he was going to have it played down or
17 whatnot, like it wasn't that much of a big deal, I guess.

18 Q. And at that point in time was your understanding
19 that the --

20 MR. WOLFE: I'm going to object to leading. He
21 can ask what his understanding was.

22 THE COURT: Yes. That was leading. Rephrase
23 your question.

24 MR. CHRISTIAN: I don't even know that I asked
25 the question, Your Honor.

1 THE COURT: Well, I guess enough of it got out
2 that it was apparent that it was leading.

3 MR. CHRISTIAN: Okay.

4 BY MR. CHRISTIAN:

5 Q. At the time of this conversation what was the
6 status, if you knew, of the state criminal investigation?

7 A. It was on going.

8 Q. Okay. So fair to say it was a big deal?

9 A. Yes.

10 Q. The last thing I want to talk about today is your
11 FBI interview. You mentioned it earlier. It happened on
12 August 15th of 2012 and we met for the first time about
13 9:00 o'clock that morning, right?

14 A. Yes.

15 Q. And you testified earlier at that initial interview
16 you did not admit that you went in the gym with Terrance
17 Dean and the CERT officers, right?

18 A. Correct.

19 Q. And then you said you came back a couple hours
20 later?

21 A. Yes, sir.

22 Q. Why did you come back?

23 A. I just felt like that was the right thing to do.

24 Q. How did you make that decision?

25 A. Well, when I left the first time from the state

1 patrol office, hmm, I went to Creekwood Park in Perry and
2 I sat down, and I called my wife and, hmm, I told her what
3 was going on, and she just got -- she just said she
4 couldn't -- she just asked me was I serious and she just
5 started crying on the phone. Then that's when she just
6 told me that she couldn't even talk to me right now and
7 she said she'll call me back. So I sat there in the car
8 and I just prayed for a minute. And then she called me
9 back shortly and she was, like, come get me.

10 Q. Did you go get her?

11 A. Yes, sir.

12 Q. Where did you get her from?

13 A. I drove down from Perry back down to Oglethorpe to
14 the prison.

15 Q. Is that where she was working?

16 A. Yes, sir.

17 Q. What did you do when you got back to Macon State?

18 A. Uh, I picked her up, and, uh she got in the car and
19 she was crying.

20 MR. WOLFE: I'm going to object to the relevance
21 of any of this Judge.

22 MR. CHRISTIAN: Your Honor, he's explaining why
23 he decided to come back and tell the FBI that he had been
24 in the gym with CERT.

25 THE COURT: I overrule that objection.

1 BY MR. CHRISTIAN:

2 Q. What happened after you picked your wife up from
3 Macon State?

4 A. We were coming back and she was crying. We were
5 coming toward Montezuma and stopped by the house and she
6 was like, Emmett, you gotta make this right, and I was
7 like, I know. And then she went into the whole thing
8 about, I've always told you put --

9 MR. WOLFE: I'm going to object to hearsay.

10 MR. CHRISTIAN: Just to show the effect on the
11 listener, Your Honor.

12 BY MR. CHRISTIAN:

13 Q. I'm sorry, what was your wife saying?

14 THE COURT: I overrule that objection. Speak up
15 Mr. McKenzie.

16 A. She went to talking, saying that I've always told
17 you that you put this prison before me; you put this
18 prison before your kids; you put this prison before your
19 family and even your friends. Every time they call, you
20 go out there. It's always the prison and never us.

21 Q. What did you decide to do after talking to her?

22 A. To come on back and tell the truth.

23 Q. Now, when you came back to talk to the FBI a couple
24 hours later, did you admit you'd been in the gym with CERT
25 and with Terrance Dean?

1 A. Yes, sir.

2 Q. Did you admit when you came back --

3 MR. WOLFE: I am going to object to leading and
4 I would ask him that he testify as to what he said when he
5 came back.

6 MR. CHRISTIAN: He's already --

7 THE COURT: Did you cover this already?

8 MR. CHRISTIAN: Yes, Your Honor. I was just
9 trying to orient the witness before we move on to the
10 next subject.

11 THE COURT: You're just trying to what?

12 MR. CHRISTIAN: Orient the witness.

13 THE COURT: All right, well orient him and move
14 on.

15 MR. CHRISTIAN: Yes.

16 BY MR. CHRISTIAN:

17 Q. When you came back the second time to talk to the
18 FBI did you tell the FBI then that you had been in the gym
19 with CERT and Terrance Dean?

20 A. Yes.

21 Q. Did you admit then when you came back the second
22 time that you had put your hands on Dean?

23 A. No.

24 Q. So that wasn't entirely truthful, right?

25 A. No.

1 Q. Now, when you came home from that second interview
2 who did you talk to?

3 A. My wife.

4 Q. What did you tell her?

5 A. I told her what I had did and -- I told her what I
6 had said and what I didn't say.

7 Q. What had you not said?

8 A. About me finger swiping the inmate.

9 Q. What was her reaction?

10 MR. WOLFE: I'm going to object to relevance of
11 her reaction, Judge.

12 MR. CHRISTIAN: This goes to show the effects on
13 listener Your Honor, we're going to move to his grand jury
14 testimony.

15 THE COURT: I will admit it for that purpose.

16 BY MR. CHRISTIAN:

17 Q. What was your wife's reaction when you told her you
18 had not been completely forthcoming with the FBI?

19 A. She was like -- basically like, you need to make
20 this as right as possible. You need to go in there and
21 let them know everything.

22 Q. What did you do the next morning?

23 A. I told you everything.

24 Q. Thank you, Mr. McKenzie.

25 THE COURT: Mr. Jarrard?

1 MR. JARRARD: Your Honor, I need one minute to
2 get my laptop.

3 THE COURT: Certainly.

4 MR. JARRARD Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. JARRARD:

7 Q. Mr. McKenzie, we were having difficulty hearing you
8 so I would ask that you speak up, okay?

9 A. All right.

10 Q. My name is Brian Jarrard and I represent Sergeant
11 Hall.

12 A. Okay.

13 Q. Now, you met with the prosecution team, Mr.
14 Christian and Ms. Boyd, last Wednesday to prepare for
15 trial, correct?

16 A. Yes.

17 Q. And at that time did you review the videos from the
18 E dorm incident involving Terrance Dean and Officer
19 Walden?

20 A. Yes, sir.

21 Q. And from your review of those videos did they appear
22 to be true and accurate representations of what transpired
23 in E dorm that day?

24 A. Yes, sir.

25 MR. JARRARD: Ms. Hatcher, can we just turn on

1 the witness's monitor?

2 (Aside with courtroom deputy)

3 MR. JARRARD: I tried it this morning, Your
4 Honor. I'm sorry. Give me just a minute to see if
5 it'll --

6 BY MR. JARRARD:

7 Q. Now, Mr. McKenzie, I'm going to try to maximize that
8 in a minute. That caused me a problem last time. But
9 does that appear to be the video from E -- or a video from
10 E dorm that you reviewed with the U.S. Attorney's Office
11 last week?

12 A. We didn't review this portion. We were in the
13 area -- around the time the incident actually happened
14 so --

15 Q. I understand, Mr. McKenzie, but did the E dorm at
16 the time have various cameras?

17 A. Yes, sir.

18 Q. Stationed around the E dorm?

19 A. Yes, sir.

20 Q. And are you saying that you didn't review all of the
21 footage with the U.S. Attorney's Office?

22 A. No, not the complete video.

23 Q. Okay. Now does this appear to you to be at least
24 camera five's view of E dorm on the date of the
25 Dean-on-Walden incident?

1 A. Yes, sir.

2 Q. Okay. And you know, don't you, Mr. McKenzie, that
3 in the E dorm there are multiple cameras, that is multiple
4 views of what transpired that morning, correct?

5 A. Yes, sir.

6 Q. And you're saying that you haven't reviewed all of
7 that in preparation for trial?

8 A. Not that entire -- the video in entirety.

9 Q. But you do recognize this -- I'm going to try it one
10 more time. We may have to leave it --

11 MR. JARRARD: Judge, it's going to be easier for
12 everybody if it blows up and it did this morning. But if
13 not I'll leave it small.

14 Q. We're going to have to leave it that way, but you
15 can see it, can't you, Mr. McKenzie?

16 A. Yes, sir.

17 Q. And there are -- do you recall specifically which
18 camera angle you observed with the -- that you watched
19 with the U.S. Attorney's Office last week?

20 A. Five and -- I forgot the other one.

21 Q. Okay. So five is the one we're looking at, right,
22 Mr. McKenzie?

23 A. Yes, sir.

24 Q. And this appears to be the video from E dorm,
25 doesn't it?

1 A. Yes, sir.

2 Q. And there are -- do you know how many other camera
3 angles there are on this video from E dorm that morning?

4 A. No, sir.

5 Q. Did the government show you all of those other
6 angles of the video?

7 A. Sir?

8 Q. Did the government show you the other angles of the
9 video?

10 A. We only reviewed two.

11 Q. And do you remember which angles those were?

12 A. Five was one of them. The other one I don't
13 remember. It was the one from the, uh, front of the
14 building look toward the back.

15 Q. All right. And five is what we're looking at here,
16 right, Mr. McKenzie?

17 A. Yes.

18 MR. JARRARD: Your Honor, at this time I would
19 tender on behalf of Defendant Hall as Hall's Exhibit 1,
20 the video of camera five at least if not all of the Dean
21 videos.

22 MR. CHRISTIAN: The government objects, Your
23 Honor. May we approach?

24 THE COURT: Yes.

25 (BENCH CONFERENCE)

1 MR. CHRISTIAN: First, Your Honor, sort of a
2 clerical matter. The videos' caption "Dean attack of
3 Walden" that's visible the way that he's playing the video
4 right now, so we object to that. But more importantly, he
5 wants to play the whole Dean video and they haven't
6 established any foundation for the whole Dean video being
7 relevant. I know Mr. Jarrard wants to try Terrance Dean
8 for assaulting Officer Walden but that's not the trial
9 we're here for today. Mr. McKenzie wasn't even in the gym
10 during the assault. He was in the dorm after that
11 assault. He responded after the assault was over and Dean
12 was being escorted out. So if he wants to show him the
13 part of Exhibit E while McKenzie is on there and being
14 escorted out, the government has no objection to him
15 showing that portion of it. In terms of establishing the
16 relevance of what happened during the Dean assault you
17 can't see it. You can see Mr. Dean following Mr. Walden
18 around. You can actually see what's going on in the
19 assault. It has absolutely no relevance. It's purely
20 just prejudicial and inflammatory and offered essentially
21 for purposes of nullification.

22 Unless they intend to establish some foundation
23 for relevancy it's just inadmissible.

24 THE COURT: Well, putting aside the broader
25 issue that we've talked about a lot, why is it necessary

1 for his testimony if he wasn't there?

2 MR. JARRARD: He was there, Your Honor. He's
3 there right after the incident and he is standing in the
4 dorm. He places all of our clients or most of our clients
5 in the dorm at the particular times. He testified to a
6 conversation he had with my client. He testified to this
7 jury -- yes, I want to play from the beginning of the
8 video, which is just a few minutes, until the response
9 happens which shows CERT, it shows the Tact Squad, it
10 shows all of the COs responding. But very shortly, very
11 briefly into the video it shows Mr. McKenzie and then it
12 shows -- he, I presume, will be able to say when Chris
13 Hall, as it relates to my client, when Chris Hall first
14 came in, when Terrance Dean was exited out and when Chris
15 Hall came back into the dorm and when these conversations
16 he's testified about allegedly happened.

17 It's very important for this jury to see -- I
18 mean, he identifies --

19 THE COURT: But to do all that the jury doesn't
20 have to see the video. I'm not ruling the video out. But
21 to do what you want to do he can look at the video and do
22 everything you've just said. The jury doesn't have to see
23 the video for him to be able to do that. And then I will
24 have seen the video and we can decide.

25 MR. WOLFE: He also says that when he goes into

1 the dorm and runs his hand across his face and threatens
2 the guy about what he did to his guards and promised him
3 to have done that. And the government is arguing that
4 what happened before has no relevance to what went into
5 the gym and supports our defense that it does.

6 THE COURT: All I'm saying is, everything
7 you've told me you wanted to do you can do with him
8 watching the video and the jury doesn't have to --

9 MR. JARRARD: Well, I'm going to do the same
10 thing --

11 THE COURT: Well --

12 MR. CHRISTIAN: The government has no objection
13 to showing the video clips where Mr. McKenzie is on the
14 video. That the government has no problem with. Showing
15 the attack is just a nullification. There's no purpose
16 for that.

17 MR. JARRARD: Your Honor, that's not what's
18 been --

19 THE COURT: You told me what you want to do.
20 You can do that without showing the video to the jury at
21 this time. So, walk him through the video, set the things
22 you want it to set and then I will have had a chance to
23 see the video and I can decide if it's going to come in at
24 some other time. But what you've told me you don't need a
25 jury to see it to do what you want it to do with this

1 video.

2 MR. JARRARD: Your Honor, part of our defense is
3 that these gentlemen reacted --

4 THE COURT: That's the way we're going to
5 proceed.

6 MR. JARRARD: Well, let me ask you this, Your
7 Honor. Because I'm going to have to play it in total to
8 him and the jury is going to be sitting there --

9 THE COURT: That's fine.

10 MR. JARRARD: -- and it's going to take, five,
11 ten, twelve minutes.

12 THE COURT: That's fine.

13 MR. HOGUE: Your Honor, Mr. Fox had to rush to
14 the restroom. He said he would be right back. He left
15 three minutes ago.

16 MR. CHRISTIAN: Your Honor, while we're here,
17 just to clarify, Mr. Jarrard is not going to ask any
18 questions about what he sees in the video before he
19 actually arrives? Does that make sense? Before Mr.
20 McKenzie arrives?

21 THE COURT: Yes.

22 MR. CHRISTIAN: Okay.

23 THE COURT: I mean, what could he establish
24 before he got there.

25 MR. JARRARD: Yeah, I see what you're saying.

1 (BENCH CONFERENCE CONCLUDED)

2 THE COURT: Ladies and gentlemen, the plan is
3 to take a morning break at 10:00 o'clock. Is everybody
4 okay for a few more minutes? Okay. We'll go pretty close
5 to 10:00 unless we need to take a break before then.

6 MR. JARRARD: Is it possible, Your Honor, for
7 just the witness, and based on the Court's direction, to
8 see this video? If not, I'll bring my laptop up to him.

9 THE COURT: It's up on your screen, right, Mr.
10 McKenzie?

11 MR. JARRARD: And I think it's up -- is it up on
12 the jury's? Okay.

13 BY MR. JARRARD:

14 Q. Mr. McKenzie, before I have you watch the video I
15 want to ask you in December -- or in October, November,
16 and December of 2010 do you know where all there were
17 cameras at Macon State Prison?

18 A. Do I know where --

19 Q. Yeah.

20 A. -- there were cameras?

21 Q. On the whole facility, where were cameras?

22 A. Front entry, all the housing units, the perimeter,
23 and that's it.

24 Q. So it's your understanding then, Mr. McKenzie, in
25 October and December of 2010, were there cameras in the

1 big yard?

2 A. No.

3 Q. Isn't it true, Mr. McKenzie, that actually in 2010
4 the facility was just beginning to install cameras?

5 A. I don't remember.

6 Q. Do you recall whether the facility first installed
7 cameras in E dorm?

8 A. No, sir.

9 Q. You don't know one way or the other? Is that your
10 testimony, whether the first cameras to be installed were
11 in the E dorm or not?

12 A. I don't know.

13 Q. Mr. McKenzie, I want to play for you this video of
14 camera five in E dorm. Can you see it?

15 A. Yes, sir.

16 Q. Mr. McKenzie, this is going to take a few minutes
17 but I'll tell you I want you to note for yourself so you
18 can tell me when you come into E dorm, okay?

19 A. Okay.

20 (VIDEO PLAYING AT THIS TIME)

21 BY MR. JARRARD:

22 Q. I'm going to stop it just a minute, Mr. McKenzie.
23 On camera five at 2:04, do you see Inmate Dean right
24 behind --

25 MR. CHRISTIAN: Objection, Your Honor. We

1 haven't established that Mr. McKenzie has even entered the
2 facility yet.

3 THE COURT: Well, let me see where this is
4 going. You may proceed.

5 BY MR. JARRARD:

6 Q. Mr. McKenzie, at 2:04 on camera five do you see in
7 the right hand portion of the screen Inmate Dean coming up
8 behind Officer Walden as Officer Walden heads to the back
9 door?

10 MR. CHRISTIAN: Your Honor, this is -- I'm going
11 to object again. This is specifically what we were
12 talking at. My understanding was this is not where we
13 were headed.

14 MR. JARRARD: Your Honor, I don't -- I'm trying
15 to set up the time line with Mr. McKenzie and I'm not
16 going to have him describe in detail the attack, but I am
17 asking that he put the time line in context for us, Your
18 Honor.

19 THE COURT: I'll allow it for that purpose.

20 BY MR. JARRARD:

21 Q. So Mr. McKenzie, again, if you look at camera five
22 at 2:04:02 do you see Inmate Dean approaching Officer
23 Walden from behind?

24 A. Yes, sir.

25 Q. 2:04:05 Inmate Dean has begun to attack Officer

1 Walden, hadn't he?

2 MR. CHRISTIAN: Your Honor, again --

3 THE COURT: I'll allow it for this purpose.

4 BY MR. JARRARD:

5 Q. Mr. McKenzie, is the answer to my question yes, at
6 2:04:05 Inmate Dean had begin -- had begun to attack
7 Officer Walden?

8 A. Yes, sir.

9 Q. Mr. McKenzie, I want to stop it there at 2:04:31 is
10 the Dean on Walden attack still going?

11 A. Uh, as far as I can tell, yes.

12 Q. Okay. Are there any CERT team members in the dorm
13 yet?

14 A. No, sir.

15 Q. Okay. But you would expect, Mr. McKenzie, that
16 about this time a code three is being called, right?

17 A. Yes.

18 Q. Okay. I mean is it someone in the control room in
19 the dorm that's calling the code three?

20 A. Excuse me, sir?

21 Q. Who calls the code three?

22 A. Whoever sees it.

23 Q. Okay. Whoever sees the inmate attacking the guard
24 is supposed to call a code three, right?

25 A. Yes, sir. It can even be the officer that's getting

1 attacked.

2 Q. Okay. So you expect that at 2:04:31 a code three is
3 being called, correct?

4 A. I would -- guess I would have to have the audio to
5 know that for sure.

6 Q. Now, Mr. McKenzie, at 2:04:44 there's some -- would
7 you agree with me that there's some regular COs that can
8 be seen running into the dorm?

9 A. Yes, sir.

10 Q. That's those gentlemen and ladies in blue?

11 A. Yes, sir.

12 Q. Mr. McKenzie, at 2:05:04 has a CERT member just
13 entered the dorm?

14 A. Yes, sir.

15 Q. Do you recognize that CERT member?

16 A. Sergeant Hall.

17 Q. It's your testimony, Mr. McKenzie, that the first
18 CERT member to enter E dorm is Sergeant Hall?

19 A. Yes.

20 Q. At 2:05:10 do you see one or two more CERT members
21 enter?

22 A. Yes, sir.

23 Q. Do you recognize from the video who those CERT
24 members are?

25 A. One looks to be Officer Thomas, and the other one I

1 can't hardly tell. In the video they're standing right
2 beside each other.

3 Q. Mr. McKenzie, it's the CERT members who break up
4 this assault, isn't it?

5 A. Sir?

6 Q. It's the CERT members who break up Walden being
7 assaulted by Mr. Dean, isn't it?

8 MR. CHRISTIAN: Objection, Your Honor. He
9 hasn't identified that he's actually been present for any
10 of this and he's asked --

11 THE COURT: Are you asking him if he knows?

12 MR. JARRARD: Your Honor, he's identified three
13 of the CERT members who just entered the dorm.

14 THE COURT: I assume your question is does he
15 know who broke up the fight?

16 BY MR. JARRARD:

17 Q. Do you know who broke up the attack of Officer
18 Walden?

19 A. No, sir.

20 Q. Now at 2:05:32 on the video, Mr. McKenzie, is that
21 Terrance Dean being led out of the dorm?

22 A. Yes, sir.

23 Q. And Terrance Dean is not handcuffed, is he?

24 A. No, sir.

25 Q. Why is that?

1 MR. CHRISTIAN: Objection, Your Honor.

2 THE COURT: Well, he wasn't there but -- if
3 there's a procedural policy reason that he knows of --

4 MR. JARRARD: I believe there is, Your Honor.

5 THE COURT: Okay. Now that, you can ask that
6 question.

7 BY MR. JARRARD:

8 Q. Is there a reason, Mr. McKenzie, that Terrance Dean
9 is not handcuffed right after he's attacked an officer in
10 the dorm?

11 A. The only thing I can think of is to avoid a
12 confrontation in front of the other inmates, where the
13 officer would be out numbered they would just wait until
14 he got him in the sally port to handcuff him.

15 Q. That's not just what you think of. That's from your
16 time on CERT, isn't it, Mr. McKenzie?

17 A. Sir?

18 Q. That's not just something that occurs to you today,
19 that's from your time on CERT. You know why that happens.

20 A. No. My time on CERT, sir, we would lockdown the
21 building and isolate that one inmate.

22 Q. Now if an inmate is cuffed in the midst of a dorm is
23 the inmate subject to being attacked by other inmates?

24 A. Yes.

25 Q. Okay. And one role of the extracting officers is to

1 get that inmate out of that danger immediately, correct?

2 A. Correct.

3 Q. Because if you handcuff an inmate in a dorm with
4 other inmates who may have grudges against that inmate the
5 inmate is in danger, isn't he?

6 A. Yes.

7 Q. So it doesn't surprise you as you look at camera
8 five that Terrance Dean is not handcuffed as he walks out
9 of E dorm, does it?

10 A. No.

11 Q. 2:05:36 has Terrance Dean just been handed over by
12 COs to two CERT members?

13 A. Yes.

14 Q. And who are those two CERT members?

15 A. It's hard to tell on that video.

16 Q. But from your other testimony you know that that is
17 Douglass-Griffin and Redden, don't you, Mr. McKenzie?

18 A. No.

19 Q. Who escorted -- who had each arm of Mr. Dean as he
20 was escorted away from E dorm?

21 A. I don't remember.

22 Q. Sergeant McKenzie, at 2:05:52, you see in this
23 bottom right-hand corner of the screen?

24 A. Yes.

25 Q. That's Sergeant Hall with his back to the camera,

1 isn't it?

2 A. It's hard to tell on the video.

3 Q. Okay. Now you identified him when he came in, can
4 you not tell that's Sergeant Hall at 2:05:52?

5 MR. CHRISTIAN: Objection, asked and answered.

6 THE COURT: He just wants you to be sure. But
7 can you identify him from that picture?

8 THE WITNESS: Not from this still frame right
9 here, sir.

10 BY MR. JARRARD:

11 Q. But as I play it do you think you can tell if that's
12 Sergeant Hall?

13 A. I'll do my best.

14 Q. All right. Focus on it before I hit play. That was
15 Sergeant Hall, wasn't it, Mr. McKenzie?

16 A. It's still hard to tell.

17 Q. Mr. McKenzie, at 2:06:25, can you tell what's
18 happening in E dorm, generally?

19 A. They're attempting to try to lock the housing unit
20 down.

21 Q. Why would you be trying to lock the unit down in
22 your experience?

23 A. Because at this time the inmates are a little riled
24 up, so you want to just lock everything down until it gets
25 calmed down again.

1 Q. Now, did you see that CERT member just run out at
2 2:06:49?

3 A. Yes, sir.

4 Q. Was that Sergeant Hall?

5 A. Yes, sir.

6 Q. So based on your prior review of the bottom right
7 hand corner and then just seeing that CERT member, that
8 was Sergeant Hall that we identified earlier, wasn't it?

9 A. I can't say that about earlier, but I can say that
10 by right then that was Sergeant Hall.

11 Q. You can certainly say at 2:06:52 that was Sergeant
12 Hall running out of E dorm, right?

13 A. Yes, sir.

14 Q. And Terrance Dean had already been escorted out of
15 E dorm with other CERT members, hadn't he?

16 A. Yes, sir.

17 Q. Now, Mr. McKenzie, you testified earlier that there
18 was begun a process to lockdown the dorm. Now, at
19 2:07:28, it appears that the locking down of the dorm has
20 kind of fallen apart, hadn't it?

21 A. Repeat the entire question again.

22 Q. You testified earlier that it appeared to you
23 earlier in the video that the inmates had been sent to
24 their separate cells to be locked down, correct?

25 A. They were given instruction, yes, sir.

1 Q. But at 2:07:28 on the video inmates have started
2 coming back and milling around in dorm. They're not going
3 to lockdown, are they?

4 A. No, sir.

5 MR. CHRISTIAN: Objection, Your Honor. He
6 hasn't established that the witness knows what was going
7 on in the dorm and the video doesn't have audio. Mr.
8 McKenzie wasn't there.

9 THE COURT: Well, I'll allow him to answer that
10 question. I overrule the objection.

11 MR. JARRARD: Thank you, Your Honor.

12 THE COURT: I'm not so sure what the answer was.

13 MR. JARRARD: I think the answer was --

14 THE COURT: I couldn't tell if he was agreeing
15 with you or not. Ask your question again.

16 BY MR. JARRARD:

17 Q. At 2:07:33, Mr. McKenzie, the inmates are not
18 continuing to go to lockdown, are they?

19 A. No.

20 Q. You see the inmates, for whatever reason, it appears
21 that they began to mill back in the common area of the
22 dorm?

23 A. Yes.

24 (Pause).

25 THE COURT: What time are we looking for next,

1 Mr. Jarrard?

2 MR. JARRARD: 2:12, Your Honor.

3 BY MR. JARRARD:

4 Q. I want to ask, Mr. McKenzie, at 2:10:17, it appears
5 that there is some of the leadership of Macon State had
6 come in; is that fair?

7 A. Yes, sir.

8 Q. Who were those individuals? Do you recognize -- who
9 were those individuals that you see at 2:10:17 seconds?
10 Who's the gentleman in the -- looks like a tan coat?

11 A. Excuse me.

12 Q. It looked like a gentleman came in in a tan coat.
13 Who was that?

14 A. That was Mr. Bobbitt.

15 Q. And who is the gentleman in jeans in a black -- the
16 white gentleman, black pull over and jeans?

17 A. That's Mr. Blakely.

18 Q. Now at 2:10:19 seconds, is that a CERT member shown
19 on the camera or is that you, Mr. McKenzie?

20 A. That's a CERT member right there.

21 Q. Okay. And that's Kadarius Thomas who's gotten back
22 with a pepper ball gun?

23 A. Yes, sir.

24 Q. In your experience, Mr. McKenzie, what was Officer
25 Thomas doing coming back to the dorm with a pepper ball

1 gun?

2 A. Say that again?

3 Q. To your knowledge why was Officer Thomas back in the
4 dorm with a pepper ball gun?

5 A. He was back there with a pepper ball gun
6 basically -- it's a use of -- show of force to get the
7 inmates to go ahead and lockdown, to try to get them to
8 lockdown a little quicker.

9 Q. So at 2:10:39 we're back to trying to get the
10 inmates to lockdown; is that correct?

11 A. I think they were trying to get them to lockdown the
12 entire time.

13 Q. Okay.

14 THE COURT: 2:12 is your next point?

15 MR. JARRARD: Yes, Your Honor.

16 THE COURT: All right. Let's take a break at
17 this time. Ladies and gentlemen, we'll take our 20-minute
18 break. We will remain seated while you go to the jury
19 room.

20 (JURORS EXIT COURTROOM)

21 THE COURT: Counsel, I have got 9:59. We'll
22 start at 10:20 a.m.

23 (RECESS)

24 (RECONVENED)

25 THE COURT: You may continue, Mr. Jarrard.

1 BY MR. JARRARD:

2 Q. All right, Mr. McKenzie, we're back at 2:11:03. Is
3 your screen on up there? Is your screen on?

4 A. No, sir.

5 MR. JARRARD: Ms. Hatcher, would you turn his on
6 for us?

7 BY MR. JARRARD:

8 Q. Is that better, Mr. McKenzie?

9 A. Yes, sir.

10 Q. Can you see it?

11 A. Yes, sir.

12 Q. Okay. 2:11:03, correct?

13 A. Yes, sir.

14 Q. I'll give you a heads up, Mr. McKenzie, pay
15 particular attention to the next minute, okay? Mr.
16 McKenzie, 2:12:16, that is Sergeant Hall, Officer Rushin
17 and you coming into E dorm, isn't it?

18 A. Yes, sir.

19 Q. Instead of playing for you the rest of that video,
20 after that you take the pepper ball gun from Mr. Thomas,
21 don't you?

22 A. Yes.

23 Q. Okay. And Sergeant Hall is assisting -- the inmates
24 still haven't locked down, right?

25 A. No.

1 Q. And Sergeant Hall comes in and he's assisting
2 locking down E dorm at that point, isn't he?

3 A. Yes.

4 Q. You don't have to see the video to remember that, do
5 you, Mr. McKenzie? Sergeant Hall came in and he was
6 assisting you. You had the pepper ball gun. Sergeant
7 Hall was helping lockdown the dorm, wasn't he?

8 A. I mean, I don't know exactly what happened right
9 after the fact. You could probably play the video so I
10 can see it.

11 Q. I'm going to play just a few -- a small portion of
12 it for you, okay?

13 A. Okay.

14 Q. That's Sergeant Hall walking into the dorm, correct?

15 A. Yes, sir.

16 Q. And that's Sergeant Hall talking with --

17 A. Mr. Blakely.

18 Q. Mr. Blakely. Who's he talking to there?

19 A. Mr. Bobbitt.

20 Q. And he's walking around. Can you tell, is he --
21 what Sergeant Hall was doing at that point?

22 A. Giving some sort of instruction.

23 Q. Okay. Sergeant Hall is walking around the dorm and
24 he's giving instructions to somebody, right?

25 A. Yes.

1 Q. Okay. Mr. McKenzie, I want to back up and talk with
2 you the big picture about what was happening, okay? Code
3 three goes out, right, on the date of the Dean on Walden
4 incident?

5 A. Yes, sir.

6 Q. Okay. A code three means an officer is being
7 attacked by an inmate?

8 A. Yes, sir.

9 Q. Okay. When the code three went out you were out on
10 the yard assisting with feed off. Do you remember that?

11 A. No, sir. I was in the chow hall.

12 Q. Okay. You were in the chow hall assisting with feed
13 off?

14 A. Yes, sir.

15 Q. Chow hall is prison speak for the dining hall,
16 right?

17 A. Yes, sir.

18 Q. And feed off in prison speak is for getting the
19 inmates fed, right?

20 A. Yes, sir.

21 Q. But you were in the dining hall, and you were trying
22 to get the inmates fed?

23 A. Yes, sir.

24 Q. And there's a single dining hall at Macon State,
25 correct?

1 A. No, sir.

2 Q. Okay. How many dining halls are there?

3 A. Two.

4 Q. Do they serve each side of the campus?

5 A. Yes, sir.

6 Q. But each dorm doesn't have its own dining hall,
7 right?

8 A. No, sir.

9 Q. Okay. So the dorm -- I meaning the dining hall for
10 one side, you call the dorms one at a time, is that how
11 you do it?

12 A. Yes, sir.

13 Q. And you were assisting with that shifting around of
14 inmates, correct?

15 A. Yes.

16 Q. Mr. McKenzie, you were on CERT prior to 2010,
17 weren't you?

18 A. Yes, sir.

19 Q. And the CERT team by and large is always doing
20 something when they're on duty, aren't they?

21 A. Yes, sir.

22 Q. What I mean by that is the CERT team is not sitting
23 in some CERT office waiting on a code three to be called,
24 are they?

25 A. No.

1 Q. They're busy men that always have something going
2 on?

3 A. Yes, sir.

4 Q. Just like you when the code three goes out you were
5 assisting with feed off, right?

6 A. Yes, sir.

7 Q. And you would expect that the CERT members that were
8 on the campus, they were doing whatever their assigned
9 task was at the time, right?

10 A. Yes, sir.

11 Q. The code three goes out and you're expected to drop
12 what you're doing and get to the problem, aren't you?

13 A. Yes, sir.

14 Q. Okay. Now when a code three goes out these inmates
15 don't automatically become compliant when the code three
16 gets called, do they?

17 MR. CHRISTIAN: Objection, Your Honor. I'm not
18 sure, is he talking about inmates over the history of time
19 or is he talking about inmates in a specific incident?

20 THE COURT: Well, I think he's talking
21 generally. I'll allow that question.

22 MR. CHRISTIAN: But to be clear we're talking at
23 a timeframe that's years removed from the incidents at
24 issue here?

25 THE COURT: I don't know that we are.

1 MR. JARRARD: No we're not. We're talking at on
2 the date of this incident.

3 THE COURT: Okay.

4 MR. CHRISTIAN: Which incident are we talking
5 about?

6 MR. JARRARD: Terrance Dean, Mr. Christian.

7 MR. CHRISTIAN: Okay.

8 THE COURT: Well, rephrase the question because
9 that would be a different question, I think.

10 BY MR. JARRARD:

11 Q. I'm stepping you through the date of the Terrance
12 Dean incident, Mr. McKenzie.

13 A. Okay.

14 Q. You said you were in the dining hall assisting with
15 feed off?

16 A. Okay.

17 Q. Correct?

18 A. Correct.

19 Q. A code three gets called while you were in the
20 dining hall?

21 A. Right.

22 Q. You're supposed to drop what you're doing and go to
23 the code three?

24 A. Okay.

25 Q. Is that a yes?

1 A. Yes, sir.

2 Q. And you endeavor to do that, correct?

3 A. Yes, sir.

4 Q. I mean, a code three is an emergency?

5 A. Yes, sir.

6 Q. So if it's within your power, you're supposed to
7 stop what you're doing and get to the guard who is being
8 attacked?

9 A. Yes, sir.

10 Q. My question to you was however, all the things you
11 had going on, you don't expect that the inmates where you
12 are are automatically going to become compliant and do
13 everything they should based purely on the fact that a
14 code three got called?

15 A. Are you talking about the inmates in the dining hall
16 or are you talking about the inmates in the building?

17 Q. Wherever. When you were responding to that code
18 three, not only are you trying to get to the incident you
19 are also trying to make sure that inmates on the walk are
20 doing what they're supposed to do. You're trying to make
21 sure that inmates in the dining hall are doing what
22 they're supposed to do, correct?

23 A. Well, unless you just see something out of ordinary,
24 your main focus is to get to the area where the officer is
25 in trouble on that code three.

1 Q. Because it's an emergency situation, right?

2 A. Right.

3 Q. Now you get to the dorm and I think it was your
4 testimony earlier that Officer Walden was flustered; is
5 that right?

6 A. Yes.

7 Q. And you knew Officer Walden based on the nature of a
8 code three being called that he was the one most likely
9 who had been attacked?

10 A. Yes, sir. Cause the code was called down in his
11 building.

12 Q. And your testimony earlier was when you get to the
13 dorm, Dean said, y'all ain't fixing to handcuff me in the
14 dorm?

15 A. Yes, sir.

16 Q. In your experience is that because of the danger to
17 a handcuffed inmate in the dorm? Did that surprise you
18 when Dean said that?

19 A. No, but it -- no, sir.

20 THE COURT: No, it didn't surprise you? There
21 were two questions there. I'm just trying to figure out
22 which one he answered.

23 MR. JARRARD: All right. I'll break -- thank
24 you, Your Honor.

25 BY MR. JARRARD:

1 Q. Did it surprise you?

2 A. No, sir. I mean he was agitated, so no, sir.

3 Q. And the y'all was talking about whoever was coming
4 to remove him out of the situation, right?

5 A. That was pretty much directed to all security staff.

6 Q. Officer who?

7 A. That was pretty much directed at all security staff.

8 Q. Okay. Do you understand that after he had attacked
9 Mr. Walden, Dean was walking out of the dorm and said,
10 "Y'all ain't fixing to do anything, you ain't fixing to
11 cuff me", and that was directed to the security staff,
12 right?

13 A. Yes.

14 Q. Then you head out -- you actually go to E dorm and
15 then you leave to go get the pepper ball gun, don't you?

16 A. I started out to go get it, yes, sir.

17 Q. And the pepper ball gun has, as its name implies,
18 pepper to help control the inmates, right?

19 A. Say that question again.

20 Q. The pepper ball gun has concentrated pepper
21 substance in it to help control unruly inmates, right?

22 A. Yes, sir.

23 Q. Okay. That's why you went to get it?

24 A. That's when I started --

25 Q. You went to get it to help --

1 **A.** I went to start -- I started out to go get it yes,
2 sir.

3 **Q.** Okay. But while you were on your way CERT member
4 Kadarius Thomas actually runs past you, waves you off, and
5 says I'm going to get the pepper ball gun, right?

6 **A.** He didn't really wave me off. He just run past me
7 and going toward main control so I already knew. So, yes,
8 sir.

9 **Q.** But when Thomas comes past you and he's gone to get
10 the pepper ball gun you divert what you're doing and you
11 go to a dorm, another dorm, right?

12 **A.** No.

13 **Q.** You go back to the kitchen?

14 **A.** No, sir. When I stepped out and when he ran past
15 me, I gave the inmate that was in front of E-2 direction
16 to go back toward that building which is over by D
17 building. D --

18 **Q.** Okay. And based on your prior statements, that's
19 what I understood. You told a group of inmates near you
20 at that time to do a certain thing, right?

21 **A.** Yes, sir.

22 **Q.** Okay, why did you tell them to go back to their
23 building?

24 **A.** Go back to their building? Why?

25 **Q.** Yeah.

1 **A.** Because we had an emergency situation and the -- in
2 the time we have an emergency situation, you want to make
3 sure you contain the situation therefore, so it won't
4 spread out throughout the rest of the institution. So the
5 main thing to do is to gain inmate control by putting them
6 in a secure area.

7 **Q.** And one reason is if you know that CERT is about to
8 be bringing an inmate across the yard you don't -- if you
9 can help it, you want inmates off the yard, right?

10 **A.** Correct.

11 **Q.** That's for the safety of the inmate who is being
12 escorted?

13 **A.** Yes.

14 **Q.** For the safety of the CERT officers who were
15 escorting the inmate?

16 **A.** Yes.

17 **Q.** And this is all happening very quickly, isn't it?

18 **A.** Kind of, but the inmates are wanting to know what
19 was going on, this, that and the other, so I had answered
20 basically all of the questions. The warden told me we
21 just got a major situation going on, I need for y'all to
22 go back to y'all's building.

23 **Q.** But you expect them to get with it, right? There's
24 an emergency code called, the inmates need to get where
25 you told them, right?

1 A. Yes.

2 Q. Now, at some point you see members of the CERT team
3 escorting Dean across the yard, don't you?

4 A. Yes, sir.

5 Q. And I think your testimony earlier was that you saw
6 that they had cameras, right?

7 A. Yes.

8 Q. But you couldn't tell if the cameras were on or not,
9 is that your testimony?

10 A. Yes.

11 Q. Explain to the jury what was it about how the
12 cameras were being carried that indicated to you that they
13 weren't on?

14 A. If I remember they were carried in such a manner
15 like they was like almost like pointed down.

16 Q. You mean they had them in their hand but they were
17 doing something with the inmate, so you didn't
18 have somebody?

19 A. No. The people who had the camera weren't holding
20 the inmate, they were walking behind him.

21 Q. When you saw the CERT members on the yard with Dean
22 do you remember who had each of his arms?

23 A. Sir?

24 Q. When you saw the CERT members walking across the
25 yard with Dean do you remember which CERT member had each

1 arm?

2 A. No, sir.

3 Q. And let's talk about you in the gym with Mr. Dean.

4 You swipe your finger across Mr. Dean's face and then you
5 tell him not to mess with your officers and then you start
6 to walk out, correct?

7 A. Yes.

8 Q. And as you do that you presumably see out of the
9 corner of your eye Officer Redden throw Dean to the
10 ground?

11 A. No, sir.

12 Q. Mr. McKenzie, in your multiple interviews with the
13 prosecutors and the FBI in this case have you ever said
14 that my client was in the gym?

15 A. No, sir.

16 Q. Not a single time, have you?

17 A. No, sir.

18 THE COURT: You're talking at Mr. Hall?

19 MR. JARRARD: Yes, Your Honor. I'm just looking
20 at one thing.

21 BY MR. JARRARD:

22 Q. So Mr. McKenzie, in all of the preparation you've
23 had for trial, you've had meetings with FBI agents?

24 A. Yes, sir.

25 Q. You've had meetings with Mr. Christian and Ms.

1 Boyd?

2 A. Yes, sir.

3 Q. Stand up, Chris. You have never told any of these
4 people that this man right here, my client Chris Hall, was
5 ever in the gym with Terrance Dean, have you?

6 A. No, sir.

7 Q. Not once?

8 A. No, sir.

9 Q. That's Chris Hall?

10 A. Yes, sir.

11 Q. Do you know him?

12 A. Yes, sir.

13 Q. He wasn't in the gym as far as you know?

14 A. Not that I remember.

15 Q. Thank you, Chris. Mr. McKenzie, you said you don't
16 remember Redden throw down Dean?

17 A. No, I didn't say that.

18 Q. Okay. Did Redden throw Dean down in the gym?

19 A. Yes.

20 Q. And you remember that's what happened right after
21 you swiped your hand across Dean's face?

22 A. Yes, sir.

23 Q. And it was Redden, right?

24 A. Yes, sir.

25 Q. Once you walk out of that gym quite naturally you

1 had no idea what happened in the gym after you left, do
2 you? From your observation?

3 A. Repeat the question.

4 Q. You didn't see anything that happened in the gym
5 after you swiped Dean's face and walked out, did you?

6 A. And Redden threw -- uh -- threw him down and punched
7 him in the face. After that when I walked out, no, I
8 didn't see anything else after that.

9 Q. Okay. All right. You swiped his face, you see
10 Redden throw him to the ground, you walk out, correct?

11 A. I see Redden throw him to the ground and punch him
12 in the face and then I walked out.

13 Q. Okay. You walk out and that's all you can testify
14 to about what happened in that gym, right?

15 A. Yes.

16 Q. And you leave the gym and you go back to E dorm,
17 right?

18 A. I go back down there and on the way down there was
19 some officers down there trying to get some inmates to pat
20 search so they can put them back in the building because
21 we had began to lock the institution down so I assisted
22 with that, pat search of one or two inmates, or whatnot,
23 maybe three. Once we got them escorted and put them in
24 their cells or whatnot, I went back in E-2.

25 Q. So the answer to my question is yes, after you've

1 left the gym you've described a number of things you did,
2 but you went back to E dorm?

3 A. Yes.

4 Q. E-2?

5 A. Yes.

6 Q. Okay. And we watched the video earlier at about
7 2:12 you, my client Mr. Hall, and Mr. Rushin walk into
8 E dorm, right?

9 A. Yes.

10 Q. Do you remember in the small portion of the video we
11 watched today, Mr. McKenzie, it was about 2:05 when Dean
12 is being escorted out of gym -- I mean out of the dorm?

13 A. Yes, sir.

14 Q. 2:05, Dean's going out. 2:12 Hall, McKenzie, Rushin
15 are coming back in, right?

16 A. Correct.

17 Q. Now you testified earlier on direct examination with
18 Mr. Christian that you said certain things to MSP
19 supervisors when you were back in the E dorm, right?

20 A. Yes, sir.

21 Q. You testified that you said, they were up there
22 whipping his behind?

23 A. Yes, sir.

24 Q. Now, when you said they are up there whipping his
25 behind, my client Chris Hall is in E dorm with you, right?

1 A. Yes.

2 Q. Now, Mr. McKenzie, you said that Sergeant Hall
3 participated in this discussion when you said they're up
4 there whipping his behind?

5 A. Yes.

6 Q. Are you sure he participated in that discussion?

7 A. I mean, he was standing by the -- I don't remember
8 who said what. When I said what I said, I don't remember
9 who replied what, but he was standing there.

10 Q. Do you remember testifying to the grand jury that
11 when this conversation was going on Sergeant Hall was
12 walking around the dorm trying to get everybody locked
13 down?

14 A. Yes.

15 Q. Mr. McKenzie, you're later at the hospital with
16 Bolden, aren't you?

17 A. Could you repeat that question?

18 Q. You were later at the hospital with Inmate Dean and
19 Officer Bolden, aren't you?

20 A. Yes.

21 Q. And Bolden tells you that Dean deserved what he got,
22 didn't he?

23 A. Yes.

24 Q. I want to talk to you a little bit about you
25 becoming a cooperator in this case. The FBI contacted you

1 shortly before you had to come and talked to the federal
2 grand jury, didn't they?

3 A. No.

4 Q. Do you remember the FBI or Mr. Christian,
5 prosecutors reaching out to you the day before the grand
6 jury?

7 A. No. I received a -- a subpoena and instruction from
8 Ms. Cladd at the prison that I had to go and meet with
9 them that day.

10 Q. And you didn't just show up cold to the grand jury.
11 The FBI or the prosecution talked to you in the days
12 leading up to the grand jury, didn't they?

13 A. Repeat that question. I can't hardly hear you.

14 Q. The FBI or the prosecution or all of them they
15 talked to you in the days leading up to your testimony at
16 the grand jury, didn't they?

17 A. Yes, they talked to me the day before.

18 Q. And the day before you lied to the FBI, didn't you?

19 A. Yes, sir.

20 Q. And you knew immediately when you lied to the FBI
21 you were in hot water?

22 A. Yes, sir.

23 Q. Nobody had to explain to you that lying to the FBI
24 was serious for Emmett McKenzie, did they?

25 A. No, sir.

1 Q. So when you came to the grand jury Mr. Christian
2 said if you cooperate, you testify truthfully, we're not
3 going to hold that lying to the FBI against you, didn't
4 he?

5 A. We talked about that the day before when I came back
6 the second time.

7 Q. Right. You talked about that if you did what was
8 expected of you you weren't going to be prosecuted for
9 lying that day to the FBI?

10 A. If I did the right thing, yes.

11 Q. Since that day, Mr. McKenzie, you've been
12 cooperating with the prosecution in this case, haven't
13 you?

14 A. Yes.

15 Q. You were subsequently indicted by the grand jury?

16 A. Yes.

17 Q. Were you indicted?

18 A. Yes, sir.

19 Q. Well, didn't you go in and plea to what's called an
20 information? Do you remember that?

21 A. I don't.

22 Q. Do you remember coming in and saying that you would
23 plea to a document called an information as opposed to
24 your case having to go in front of the grand jury?

25 A. I don't. I mean, really, I'm unclear of what you're

1 talking about.

2 Q. Mr. McKenzie, you know, you knew the day before your
3 grand jury testimony and you know today that whatever you
4 do to help the government is going to make things easier
5 on you, isn't it?

6 A. I don't know that. That decision ultimately lies
7 upon the judge, so I don't know.

8 Q. That's what you're hoping happens, isn't it?

9 A. I mean that's how the federal government works.

10 Q. No, that's not my question, Mr. McKenzie. That's
11 what Emmett McKenzie is hoping is going to happen, isn't
12 it?

13 A. That -- what's the question?

14 Q. Mr. McKenzie, you hope that if you do everything
15 expected of you by the government things are going to be
16 easier on you, don't you?

17 A. I would hope so.

18 Q. You hope that for yourself?

19 A. Yes.

20 Q. You hope that for your wife who you talked about
21 earlier?

22 A. I mean, whatever happens to me is going to affect
23 her, so, it affects her, it affects my family, my friends,
24 everyone around me.

25 Q. Yes, sir. So the answer to my question is, yes,

1 sir, you hope that the government takes it easier on you
2 for your wife's sake, don't you?

3 A. I mean, yes.

4 Q. You hope that the government takes it easier on you
5 for all these friends of yours you're talking about, don't
6 you?

7 A. I mean, yes.

8 Q. Mr. McKenzie, you signed a written document called a
9 plea agreement with the government, didn't you?

10 A. Yes.

11 Q. And you went over that plea agreement line by line
12 with your lawyer, Mr. Cox, didn't you?

13 A. Yes.

14 Q. And Mr. Cox, a good lawyer, he explained to you what
15 that plea agreement was about, didn't he?

16 A. Yes.

17 Q. And that plea agreement even has a provision about
18 your cooperation that you hope to get credit for
19 cooperating?

20 A. Yes.

21 Q. You read that, didn't you?

22 A. Yes.

23 Q. You discussed it?

24 A. Yes.

25 Q. You thought about it?

1 A. Yes.

2 Q. So when you signed that plea agreement you're hoping
3 that you have credit, that things get easier on you,
4 you've done what the government has asked you to do, you
5 came in and met with them, you met with them last week,
6 didn't you?

7 A. Yes.

8 Q. Mr. McKenzie, you know that Mr. Christian and Ms.
9 Boyd, and the prosecution in this case, say that my client
10 conspired to violate the civil rights of inmates. You
11 understand that's what we're here about, right?

12 A. Yes.

13 Q. To your knowledge Mr. McKenzie, my client
14 Christopher Hall never used force on Terrance Dean in the
15 gym, did he?

16 A. I didn't see him do it.

17 Q. So is the answer to my question, yes, to your
18 knowledge Chris Hall never used force on Terrance Dean in
19 the gym?

20 A. No. No, sir.

21 Q. No, you don't have any knowledge of that, correct?

22 MR. CHRISTIAN: Your Honor, he's answered the
23 question multiple times.

24 MR. JARRARD: Well, he got a little --

25 THE COURT: I think he's made it clear. Yeah, I

1 understand the confusion you had there, but I think he's
2 made it clear that he can't say that Sergeant Hall beat
3 Mr. Dean. Am I correct, Mr. McKenzie?

4 THE WITNESS: Yes.

5 BY MR. JARRARD:

6 Q. And at no point prior to today have you ever told
7 anybody involved in this investigation that he did, have
8 you?

9 A. No, sir.

10 Q. Mr. McKenzie, you never saw CERT hit an inmate
11 before the Terrance Dean incident, did you?

12 A. No, sir.

13 Q. Never?

14 A. No, sir.

15 Q. You're not disagreeing with me, you're saying no,
16 you never saw it, right?

17 A. No, I never seen CERT just hit an inmate, no, sir.

18 Q. Have you talked about with the government these
19 prior instances listed in the indictment?

20 A. What prior instances?

21 Q. Westbrook on Hinton, Jones on Davis, Miller on
22 Felton?

23 A. I was only at work for one incident and that was the
24 Dean incident.

25 Q. Okay. And you have never discussed any allegations

1 that Chris Hall participated in hitting any inmates with
2 my client Chris Hall, have you?

3 MR. CHRISTIAN: Objection, Your Honor. Prior
4 bad acts, prior good acts. I mean, this is squarely
5 within the motions we filed, Your Honor. We wouldn't be
6 permitted to do it under 404(b).

7 MR. JARRARD: Your Honor, I'm not asking about
8 other instances, I'm asking about the four instances
9 listed in the indictment.

10 THE COURT: Then that, yes.

11 BY MR. JARRARD:

12 Q. You've never discussed the Hall -- I mean, the Dean
13 on Walden incident with Chris Hall, have you?

14 A. The only thing we talked about was --

15 MR. CHRISTIAN: Your Honor. Objection. This is
16 getting into the Defendants's statements. If he's going
17 to ask what Defendants have said to them, Defendants can't
18 get their own statements in that way.

19 THE COURT: Well, but the question is whether or
20 not the witness had discussed with the government any
21 involvement by Sergeant Hall with the other beatings? Is
22 that the question?

23 MR. CHRISTIAN: That was the previous question.

24 MR. JARRARD: No, Your Honor. Let me try to
25 rephrase it. I'll just withdraw that question if that's

1 the way it's perceived to be.

2 BY MR. JARRARD:

3 Q. Mr. McKenzie, have you had any conversations with
4 Sergeant Hall about what happened to Dean or to Westbrook?
5 Just yes or no. I'm not asking --

6 A. No.

7 MR. JARRARD: One minute, Your Honor.

8 BY MR. JARRARD:

9 Q. Mr. McKenzie, do you remember telling me earlier
10 that you didn't remember, as you sit here today, who was
11 escorting Inmate Dean?

12 MR. CHRISTIAN: When are we talking about the
13 escort, Your Honor?

14 THE COURT: Pardon?

15 MR. CHRISTIAN: What part of the escort are we
16 talking about?

17 THE COURT: Yeah, what --

18 MR. JARRARD: As he leaves the E dorm.

19 BY MR. JARRARD:

20 Q. As he leaves the E dorm, he's being escorted across
21 the yard, you testified earlier, Mr. McKenzie, that you
22 don't recall who in CERT were escorting Inmate Dean. That
23 was your testimony, right?

24 A. Yes.

25 Q. You knew when you met with the FBI on June 4th, just

1 last Wednesday who was escorting him, didn't you?

2 A. No.

3 Q. Did you tell the FBI last Wednesday Dean was being
4 escorted by Douglass-Griffin and Redden?

5 A. No. That's when he went with him when he was in the
6 gym.

7 Q. All right. So, when we're in the gym it's your
8 testimony to this jury that two CERT members escorting
9 Dean are Douglass-Griffin and Redden, right?

10 A. No, because they weren't escorting him at that
11 point. Escorting would have to mean that they were
12 moving. They were just stationary right there.

13 Q. Mr. McKenzie, do you remember talking to the
14 prosecution team last Wednesday?

15 A. Yes.

16 Q. Did you say Dean was being escorted by Darren
17 Douglass-Griffin and Willie Redden?

18 MR. CHRISTIAN: Objection. Asked and answered.

19 THE COURT: Well, I don't know --

20 MR. JARRARD: I don't think he has answered it,
21 Your Honor.

22 THE COURT: Overruled.

23 BY MR. JARRARD:

24 Q. Do I need to repeat myself, Mr. McKenzie?

25 A. Yes.

1 Q. Do you remember meeting with the prosecution team
2 last Wednesday?

3 A. Yes.

4 Q. Did you tell the prosecution team Dean was being
5 escorted by Darren Douglass-Griffin and Willie Redden?

6 A. That statement was made, was made pertaining in the
7 gym.

8 Q. Okay. In the gym. That was how we started just a
9 few moments ago?

10 A. Yes.

11 Q. In the gym you said Dean was being escorted by
12 Darren Douglass-Griffin and Willie Redden, didn't you, Mr.
13 McKenzie?

14 A. Yes.

15 MR. JARRARD: Nothing further, Your Honor.

16 THE COURT: Mr. Fox?

17 MR. FOX: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. FOX:

20 Q. Good afternoon, Mr. McKenzie. My name is John Fox.

21 A. How you doing, sir.

22 Q. I represent Mr. Delton Rushin.

23 A. Okay.

24 Q. Can you hear me okay?

25 A. Sir?

1 Q. Can you hear me okay?

2 A. Yes, sir.

3 Q. Okay. If for any reason I ask you a question that
4 you don't understand or that you can't hear, please let me
5 know, all right?

6 A. Okay, sir.

7 Q. Okay. Now you testified earlier for the government
8 that you were a CERT officer between 2007 and 2009,
9 correct?

10 A. Yes, sir.

11 Q. And it's also correct that during the time that you
12 were a CERT officer that you served with Mr. Delton
13 Rushin, correct?

14 A. Yes, sir.

15 Q. All right. And I believe you had stated earlier
16 that during October, November, and December of 2010 that
17 there were cameras at the front entry of the Macon State
18 Prison, correct?

19 A. Yes, sir.

20 Q. Okay. That there were cameras in some of the
21 housing pods such as an E dorm, correct?

22 A. Yes, sir.

23 Q. Okay. Where else were cameras at the Macon State
24 Prison? Just in that time frame.

25 A. On the perimeter and I think all the other housing

1 units. I can't remember exactly when they put the cameras
2 inside the prison.

3 Q. Okay. But it would be fair to say that the gym was
4 not the only location that didn't have a surveillance
5 camera, correct?

6 A. Correct.

7 Q. All right. There were other locations that didn't
8 have cameras as well?

9 A. Correct.

10 Q. All right. I'd like to take you back to August,
11 August 15th of 2012.

12 A. Okay.

13 Q. Do you recall meeting with the FBI that day,
14 correct?

15 A. Yes.

16 Q. And in your words you lied to them, you omitted some
17 information, correct?

18 A. Yes.

19 Q. And then when you left you drove to a park in Perry,
20 you stopped your car, correct?

21 A. Yes.

22 Q. You were probably pretty upset at that point in
23 time, is that a fair assessment?

24 A. Yes, sir.

25 Q. You were pretty worried about what was going to

1 happen to you, correct?

2 A. Yes, sir.

3 Q. You were worried about what your future would be,
4 correct?

5 A. Yes, sir.

6 Q. All right. And there at that park did you see other
7 people, families, children playing?

8 A. No, sir.

9 Q. Okay. You were the only one there?

10 A. Yes, sir.

11 Q. All right. You picked up the phone and called your
12 wife, correct?

13 A. Yes, sir.

14 Q. All right. And from what you've described
15 Ms. McKenzie wasn't too happy with what you told her, was
16 she?

17 A. No, sir.

18 Q. She was so upset she hung up the phone on you,
19 correct?

20 A. No, sir.

21 Q. Okay. She didn't tell you I've got to get off the
22 phone?

23 A. Yes.

24 Q. Okay. So she hung up the phone on you, correct?
25 You two were no longer talking at that point?

1 A. Correct.

2 Q. Okay. And then what happened, did you just sit in
3 your car?

4 A. I was standing outside my car.

5 Q. Standing outside your car. How long before
6 Ms. McKenzie called you back?

7 A. Uh, in about five or 10 minutes, I'm guessing.

8 Q. Five or 10 minutes. And she was pretty upset when
9 she called you back, wasn't she?

10 A. Yes.

11 Q. All right. Did it upset you to know that you had
12 done something that made your wife sad or made her cry?

13 A. Yes, sir.

14 Q. After that you went back and talked to the FBI,
15 correct?

16 A. Yes, sir.

17 Q. I think you said something to the effect of your
18 wife told you you need to make this right, you need to do
19 what's right, correct?

20 A. Yes, sir.

21 Q. All right. And when you went back and talked to the
22 FBI the second time you didn't tell them everything, did
23 you?

24 A. No, sir.

25 Q. Okay. In fact you went home that night and had to

1 tell your wife again that you left out information,
2 correct?

3 A. Yes, sir.

4 Q. All right. And she was again pretty upset with you
5 at that point in time, fair to say?

6 A. Yes, sir.

7 Q. All right. Was she more upset then than she was
8 earlier that afternoon?

9 A. (Nodding head).

10 Q. I'm sorry sir, the court reporter cannot pick up
11 head movements, if you're shaking your head --

12 A. Repeat the question again.

13 Q. August 15, 2012, when you got home that evening from
14 the second time you talked with the FBI --

15 A. Uh-huh.

16 Q. -- you told your wife that you hadn't told
17 everything yet again, was your wife more upset with you
18 then than she was earlier in the afternoon?

19 A. It was still the same level. She was pretty upset
20 from earlier, so, I mean --

21 Q. And when you say pretty upset she was pretty upset?

22 A. Yes, sir. She was -- she had been crying.

23 Q. Okay. And she told you, I believe you told
24 Mr. Christian, something to the effect of you need to make
25 this right. Sound fair?

1 A. Yes, sir.

2 Q. Okay. So you went into the grand jury the next day
3 and you testified, correct?

4 A. Yes, sir.

5 Q. Okay. And before that -- well first, you were given
6 a subpoena to show up at the grand jury, correct?

7 A. Yes, sir.

8 Q. Okay. And when you showed up at the grand jury
9 voluntarily Mr. Christian told you he was going to tear up
10 that subpoena, correct?

11 A. Yes, sir.

12 Q. Okay. And you also understood at that point in time
13 that if you testified to the grand jury, that you would
14 not be charged with having lied to the FBI the day prior,
15 correct?

16 A. Yes, sir.

17 Q. So it would be fair to say at that point in time you
18 knew that you had to be truthful, accurate, and complete
19 in what you told the grand jury, correct?

20 A. Yes, sir.

21 Q. And do you remember being questioned by
22 Mr. Christian at the grand jury about the Terrance Dean
23 incident?

24 A. Yes, sir.

25 Q. All right. And do you remember your response when

1 asked how many or who the CERT members are who were in the
2 gym?

3 A. Yes, sir.

4 Q. Okay. And is it correct your answer was, "Six, I
5 believe it was six?"

6 A. Yes, sir.

7 Q. And you would agree with me at that date back in
8 August you didn't name the name of any of those six
9 officers?

10 A. No, sir.

11 Q. Okay. Do you remember meeting with the FBI in May
12 of this year, May 21, 2014?

13 A. Yes, sir.

14 Q. Okay. And that was nearly two years after you had
15 appeared in front of the grand jury, correct?

16 A. Yes, sir.

17 Q. And at that time you gave the FBI the name of six
18 people that you believed were there, correct?

19 A. Yes, sir.

20 Q. All right. It wasn't until almost two years later
21 that you recalled the names of the individuals, the six, I
22 believe, six who were there?

23 A. No, sir.

24 Q. Okay. All right. But the bottom line is you didn't
25 tell it to the grand jury that day, did you?

1 A. No, sir.

2 Q. All right. You omitted that from your grand jury
3 testimony?

4 A. I wasn't asked.

5 Q. So sir, when you were in front of the grand jury you
6 knew you were there to be truthful, you knew you were
7 there to be complete and accurate, you didn't feel the
8 need to tell the grand jury the names of the six who were
9 there?

10 A. I answered the questions that were given, sir.

11 Q. All right. So your testimony is you were only
12 answering what the government asked you?

13 A. Yes, sir.

14 Q. Okay. You watched the video from the incident with
15 Terrance Dean earlier today, correct?

16 A. Yes, sir.

17 Q. Okay. And your testimony was that as Officer Redden
18 threw Dean on the ground you walked out of the gym,
19 correct?

20 A. After he punched him, yes, sir.

21 Q. Okay. After Redden punched Dean, correct?

22 A. Yes, sir.

23 Q. And you then went back to the E dorm, correct?

24 A. Yes, sir.

25 Q. Okay. And at that E dorm you had conversations with

1 the supervisor, Blakely and those people, and that's when
2 you said, the moment you were in E dorm, Terrance Dean,
3 something's happening to Terrance Dean in the gym, right?

4 A. Yes, sir.

5 Q. When you walked in that dorm at 2:12 Delton Rushin
6 walked in right behind you, didn't he?

7 A. Yes, sir.

8 Q. Okay. So while you're having this conversation with
9 your superiors, saying that whatever happened to Dean is
10 happening right now while I'm sitting here talking to you,
11 Delton Rushin was in the E dorm, wasn't he?

12 A. Yes, sir.

13 Q. All right. You never saw Delton Rushin hit Terrance
14 Dean, did you?

15 A. No, sir.

16 Q. You've never seen Delton Rushin use any kind of
17 force on Terrance Dean, have you, sir?

18 A. No, sir.

19 Q. And you haven't had any conversations with Delton
20 Rushin about the Terrance Dean incident, have you, sir?

21 A. No, sir.

22 Q. All right. Thank you, Mr. McKenzie.

23 THE COURT: Mr. Wolfe?

24 MR. WOLFE: Thank you, Judge.

25 CROSS EXAMINATION

1 BY MR. WOLFE:

2 Q. Good morning, Mr. McKenzie, how are you doing?

3 A. Doing fine, sir.

4 Q. Holding up? I know it's been a long morning.

5 A. It is, yes, it is.

6 Q. I'm old so I don't hear very well, so if you'll
7 please speak into that microphone so that I can hear you
8 I'd appreciated it, all right?

9 A. All right.

10 Q. My understanding is that you're experienced in a
11 number of different roles as a Department of Corrections
12 corrections officer, correct?

13 A. Yes, sir.

14 Q. Okay. And, in fact, you sort of worked your way up
15 the ranks a little bit. Is that an accurate statement?

16 A. Yes, sir.

17 Q. Okay. Did you begin as a corrections officer?

18 A. Yes, sir.

19 Q. And were you a C1?

20 A. Yes, sir. I began as --

21 Q. Is that what they call it, C1?

22 A. C01.

23 Q. There you go. Corrections officer 1. And you moved
24 up to a C02, correct?

25 A. Yes, sir.

1 Q. And is my understanding correct that by stating that
2 you move up from a CO1 to a CO2 that a CO2 does different
3 things than a CO1?

4 A. No.

5 Q. All right. Then what's the difference in a CO1 and
6 a CO2? Experience?

7 A. Experience and five percent pay.

8 Q. Good. All right. So things change, right?

9 A. Yes.

10 Q. And that's a big difference between a CO1 and a CO2.
11 Is it simply a pay increase that's the difference between
12 a CO2 and a sergeant?

13 A. Uh --

14 Q. Or are there other differences?

15 A. Oh, there are other differences.

16 Q. Like what?

17 A. You're a supervisor.

18 Q. And when you're a supervisor you don't do some of
19 the things that the CO1s and CO2s are doing regularly, you
20 manage them and make sure they're doing things correctly,
21 right?

22 A. Yes, sir.

23 Q. Okay. And so while they're doing their duties you
24 have other responsibilities, correct?

25 A. Yes, sir.

1 Q. Reports, different things that a CO1 or 2 might not
2 have to do?

3 A. Yes, sir.

4 Q. All right. And then I think you were kind enough to
5 share with Mr. Christian that when you went to Dooly State
6 Prison, they elevated you to a lieutenant, correct?

7 A. Yes, sir.

8 Q. All right. And I reckon a lieutenant has different
9 responsibilities than a sergeant, right?

10 A. Yes, sir.

11 Q. And a lieutenant certainly has different
12 responsibilities than a CO1 and a CO2?

13 A. Yes, sir.

14 Q. But for the most part CO1s, 2s, sergeants and
15 lieutenants are guards, correct?

16 A. Pretty much -- yes, sir.

17 Q. Okay. All right. And is my understanding correct
18 that most of the CO1 and 2 responsibilities and the other
19 guards' duties take place inside the prison, within the
20 four walls of the perimeter?

21 A. Well, it all depends on what you are assigned to.
22 If you are assigned to work inside the institution, yes,
23 but we also have -- at that time at Macon State you have
24 an officer who has to work -- drove vehicles on the
25 perimeter, as well as you had, uh, sergeants who did

1 transfers or whatnot outside.

2 Q. All right. So then there were times when different
3 guards did different things and depending upon your
4 assignment, you may have had different training and
5 different responsibilities, correct?

6 A. Yes.

7 Q. Now, my understanding is in December, November,
8 October of 2010 there were about 1,729 inmates at Macon
9 State Prison. Would that be a fair estimate?

10 A. Yeah -- yes, sir.

11 Q. All right. And having been at Macon State Prison
12 and Dooly State Prison, you know that different prisons
13 have different classifications, correct?

14 A. Yes.

15 Q. All right. And there are minimum security prisons,
16 right?

17 A. Yes.

18 Q. Mediums?

19 A. Yes.

20 Q. And then there are close security prisons, right?

21 A. Yes, sir.

22 Q. Like Macon State?

23 A. Yes, sir.

24 Q. Which is the same as Jackson where they do the death
25 penalty and hold the death row inmates, right?

1 A. Yes, sir.

2 Q. So you know that there is a difference and what
3 institution you go to is determined by a classification
4 that inmate goes through when he first goes into the
5 system, right?

6 A. Yes, sir.

7 Q. All right. And closed security prisons like Macon
8 State Prison house --

9 MR. CHRISTIAN: I'm going to object, Your Honor.
10 It's irrelevant.

11 THE COURT: Mr. Wolfe?

12 MR. WOLFE: It goes to Mr. Hinton's role as
13 security, head of security at the prison.

14 THE COURT: I will overrule that objection but
15 make your point quickly, which is simply that this is a
16 closed security prison?

17 MR. WOLFE: Right.

18 THE COURT: Okay.

19 MR. WOLFE: All right. Okay.

20 BY MR. WOLFE:

21 Q. And long-term inmates go there, correct, to closed
22 security prisons?

23 A. Yes, sir.

24 Q. All right. Now, within Macon State Prison and you
25 indicated you were on the CERT team and you've been a CO1,

1 2, and up the line, correct?

2 A. Yes, sir.

3 Q. There are several different dorms, correct?

4 A. Yes, sir.

5 Q. And E-1 dorm is the dorm that we've been talking
6 about, right, today with regard to at the very least the
7 Dean incident?

8 A. No, sir. Unit E-2.

9 Q. E-2, excuse me. Okay. It was E. And is my
10 understanding correct that part of the security plan at
11 Macon State Prison was to keep the -- a certain type of
12 inmate in the E-1 or -- I mean the E-2 dorm?

13 MR. CHRISTIAN: Objection, relevance, Your
14 Honor.

15 THE COURT: Mr. Wolfe?

16 MR. WOLFE: It goes to security and the duties
17 of the CERT team and the duties of Mr. Hinton, and what he
18 might have said to different people at different times.

19 THE COURT: I overrule the objection at this
20 time. But it's a fairly simple point to make. Let's make
21 it and move on.

22 THE WITNESS: Could you repeat the question,
23 sir?

24 MR. WOLFE: Sure.

25 BY MR. WOLFE:

1 Q. Is my understanding correct that certain types of
2 inmates, gang members and those sorts of things, were kept
3 specifically in the E-2 dorm?

4 MR. CHRISTIAN: I maintain my objection, Your
5 Honor, just for the record. It's irrelevant.

6 THE COURT: You can answer that question.

7 BY MR. WOLFE:

8 A. THE WITNESS: I don't remember if that was the dorm
9 or not.

10 Q. Well, you don't remember that?

11 A. No, sir.

12 Q. All right. Okay. Well how about this. You said
13 that you had been on the CERT team before, correct?

14 A. Yes, sir.

15 Q. And I just discussed with you some of the
16 differences between the corrections officers and their
17 responsibilities as you move up the line and you're
18 familiar with that, right?

19 A. Yes, sir.

20 Q. Well you're also familiar with the fact that things
21 are different on CERT also, from the duties of the other
22 guards?

23 A. Yes, sir.

24 Q. All right. And there are cell extractions that is a
25 responsibility of CERT, correct?

1 A. Yes, sir.

2 Q. And tell the folks what a cell extraction is.

3 A. That's basically when, uh -- not necessarily a CERT
4 officer, but any security staff member would put a team
5 together in which you would have a shield man --

6 Q. What's a shield man?

7 MR. CHRISTIAN: Your Honor, again I'm going to
8 object as to relevance. He's just said this is any
9 officer's duties, it has nothing to do with CERT.

10 THE COURT: Were you talking about CERT duties
11 and extraction?

12 THE WITNESS: No. A cell extraction can be any
13 security staff member. It doesn't have to be a CERT
14 officer, it doesn't have to be a CO, it can be a sergeant
15 or a lieutenant that suits up and does it.

16 THE COURT: I sustain that objection.

17 MR. WOLFE: Okay.

18 BY MR. WOLFE:

19 Q. Then cell extractions are managed by the security
20 people at the prison, though? Would it be fair for me to
21 understand that?

22 A. Yes, sir.

23 Q. All right. And what about shake downs of the guards
24 at Macon State Prison? Are there shake downs of the
25 guards done by the CERT team?

1 A. Yes, sir.

2 Q. And that is a task that is unique to the CERT team,
3 correct?

4 A. Yes, sir.

5 Q. And part of the reasons that guards are shaken down
6 is in an attempt through security to prevent contraband
7 from coming into the institution, right?

8 A. Yes, sir.

9 Q. Drugs, correct?

10 A. Yes, sir.

11 Q. Cell phones, right?

12 A. Yes, sir.

13 Q. And drugs and cell phones are routinely found in the
14 institution, correct?

15 A. Yes, sir.

16 Q. And isn't shake downs of guards or even the shake
17 downs of the inmates necessary to discover weapons also?

18 A. Yes, sir.

19 Q. And weapons are routinely found in the prison,
20 correct?

21 A. Yes, sir.

22 Q. Shanks are a particular type of weapon which is
23 essentially a homemade knife, correct?

24 MR. CHRISTIAN: Objection, Your Honor,
25 relevance.

1 THE COURT: Well, the relevant point is, is the
2 statement upon which the government relies is the alleged
3 statement by Mr. Hinton that things are different for
4 CERT. That allows Mr. Wolfe some latitude to develop
5 his -- the points he wants to make about that. You are
6 beginning to stray a little bit, Mr. Wolfe. Make your
7 point about how CERT was different. We don't have to
8 elaborate and get into matters that are not relevant.

9 BY MR. WOLFE:

10 Q. I asked you the questions with regard to the
11 searching and shaking down of guards because when a shake
12 down of the guards occurs, you're not supposed to tell the
13 guards before it happens that it is going to happen, are
14 you?

15 A. No, sir, you're not.

16 Q. That would defeat the purpose of shaking down the
17 guards, correct?

18 A. Yes, sir.

19 Q. So if you find out on CERT that a shake down is
20 going to occur, that should stay with CERT, right?

21 A. Yes, sir.

22 Q. Let me ask you some questions about your
23 participation in the conduct that occurred on
24 December 16th of 2010, okay?

25 A. Yes, sir.

1 Q. That was the day that the Dean incident occurred,
2 correct?

3 A. Yes, sir.

4 Q. And that was the day that you've testified you
5 engaged in certain conduct, right?

6 A. Yes, sir.

7 Q. All right. And my understanding is that although
8 you had been a part of CERT up until 2009 you were no
9 longer a part of CERT, right?

10 A. No, sir.

11 Q. And you were a sergeant that was doing your own job,
12 right?

13 A. Yes, sir.

14 Q. And when you got the code three, you went to the
15 area where the incident had occurred and at the very least
16 you learned that somebody, an inmate, Dean, had put his
17 hands on staff, right?

18 A. Yes, sir.

19 Q. And there was an altercation, correct?

20 A. Yes.

21 Q. And you saw the video of the altercation. I'm not
22 going to go into the details of it. But you saw that
23 there was an assault with closed fists and those sorts of
24 things on the inmate, not on the -- pardon me -- on guard
25 Walden?

1 A. Yes, sir.

2 Q. All right. Good enough. So they extract Dean from
3 the location and my understanding is he was being escorted
4 to medical which is a responsibility that's part of the
5 transport, correct?

6 A. Yes, sir.

7 Q. Good deal. All right. And I understand that when
8 you got up to the gym, whenever it was that you got there,
9 you went in the gym, right?

10 A. Yes, sir.

11 Q. And although there might have been some confusion,
12 you saw Dean standing there with Redden and
13 Douglass-Griffin, correct?

14 A. Yes, sir.

15 Q. Standing there together. And what type of position
16 did you say they were in?

17 A. Escort position.

18 Q. Escort position. And when you came in the gym were
19 you then the superior supervising officer?

20 A. Yes, sir.

21 Q. Is that a yes?

22 A. Yes.

23 Q. And did you say anything or did anybody look to you
24 and stop to see if you had any direction for them?

25 A. No, sir.

1 Q. Okay. Was there a plan for you to be there in the
2 gym?

3 A. No, sir.

4 Q. Did anybody invite you into the gym?

5 A. No, sir.

6 Q. Was that door open and unlocked -- I mean unlocked.
7 I don't mean open -- when you walked into the gym?

8 A. It wasn't locked.

9 Q. Okay. And as you entered the gym you saw the guy
10 that you knew had assaulted Walden, correct?

11 A. Yes, sir.

12 Q. And at the risk of -- I don't mean to offend
13 anybody, you were pissed, you were hot because the inmate
14 had assaulted Walden down in E dorm, right?

15 A. I was a little upset, yes, sir.

16 Q. A little upset. You were so upset that you walked
17 up to the inmate as he was being detained with his hands
18 cuffed behind his back and put your finger in his face and
19 says, keep your hands off of my guards, right?

20 A. Something to that nature, yes, sir.

21 Q. Something to that affect. And then you put your
22 finger on his face and you swung your finger across,
23 right?

24 A. I swiped my finger, yes, sir.

25 Q. Swiped your finger and it turned his head, you

1 testified to a moment ago, correct?

2 A. Yes, sir.

3 Q. All right. And that was a use of force that was
4 unnecessary, correct?

5 A. No, sir.

6 Q. It wasn't a use of force?

7 A. No, sir.

8 Q. What was it, a training mechanism?

9 A. No, sir.

10 Q. What was it?

11 A. I don't know what they call it but it's not a use of
12 force.

13 Q. Okay. All right. Well, it better not be a use of
14 force because you didn't fill out a use of force form for
15 that day, did you?

16 A. No, sir.

17 Q. Okay. And you were angry that he put his hands on
18 your inmate, correct? I mean on your guard, correct?

19 A. I was a little upset.

20 Q. Even though it had happened within a couple of
21 minutes prior to that, right?

22 A. Yes, sir.

23 Q. All right. All right. And then you turn to leave
24 the location, but when you walked in Dean had no malities
25 on him, you saw no injuries on him, did you?

1 A. No, sir --

2 Q. And you --

3 A. -- that I could tell.

4 Q. I'm sorry, I beg your pardon.

5 A. No, sir, that I could tell.

6 Q. Well, that you could tell? You walked up close
7 enough to put your finger on his face, correct?

8 A. Yes, sir.

9 Q. All right. All right, now, Redden is a junior
10 officer to you, isn't he?

11 A. Yes, sir.

12 Q. Douglass Davis is a junior officer to you, isn't he?

13 A. Yes, sir.

14 Q. And he -- they both just see you abuse Dean,
15 correct?

16 A. No, sir.

17 Q. They didn't see you abuse Dean?

18 A. No, sir. I didn't abuse him.

19 Q. All right. I'm sorry?

20 A. I said, no, sir, I didn't abuse him.

21 Q. Oh, okay. Well, we still haven't figured out what
22 you call it what you did, though, right?

23 A. Right.

24 Q. All right. But as you're leaving the gym you
25 observe Redden slam Dean to the ground, correct?

1 A. Yes.

2 Q. With his hands cuffed behind his back --

3 A. Yes, sir.

4 Q. Correct?

5 A. Yes, sir.

6 Q. And then he punches him, I believe you said, in the
7 face?

8 A. Yes, sir.

9 Q. And then you leave the location and it's your
10 responsibility because you observed the inmate, and you
11 had participated in the conduct surrounding the situation
12 in E dorm, to fill out a report, right? You did a report,
13 a handwritten statement and a --

14 A. Yes, sir.

15 Q. And that handwritten statement was typewritten just
16 to go into the IA files, which is Internal Affairs,
17 correct?

18 A. Yes, sir.

19 Q. So you knew Internal Affairs was going to be
20 reviewing it, correct?

21 A. Yes, sir.

22 Q. And you wrote your statement, right?

23 A. Yes, sir.

24 Q. And you wrote that statement at 1404 which is 2:04
25 P.M. on December the 6th of 2010, right?

1 A. Yes, sir.

2 Q. And that was the first time that you lied with
3 regard to this case, correct?

4 A. Well, I wrote that statement on that Friday on the
5 17th, but yes, sir.

6 Q. Oh, beg your pardon. The statement if you want to
7 look at it is dated -- it says witness statement date
8 12/16/2010.

9 A. Yes, sir.

10 Q. Is this wrong? Is -- do you want to see the
11 exhibit?

12 A. No, I'm looking at it.

13 Q. Oh, okay. You see the date at the top, correct?

14 A. That's the date and the time that the incident
15 happened.

16 Q. Okay. Great. So you had an entire day to think
17 about what you were going to put into your report before
18 you lied and left out what exactly you did, correct?

19 A. Actually no, because I didn't know I was going to
20 have to write a statement until the next day.

21 Q. Pardon me?

22 A. I didn't know I was going to have to write a
23 statement until the next day.

24 Q. Oh, okay. Well you spoke with Blakely before you
25 wrote the statement, correct?

1 A. Sir?

2 Q. You spoke to Blakely before you wrote the statement,
3 correct?

4 A. Yes, in his office.

5 Q. Right. But wherever you talked to him you talked to
6 him before you wrote the statement and if I'm not mistaken
7 he told you something to the effect that you better do it
8 right because this is -- there's going to be a federal
9 investigation of this. Is that what he told you? What
10 did he say about the feds, or the feds are going to get
11 involved?

12 A. He said, I told the guys to come over and let's
13 review the video tape because it's going federal and when
14 it does their ass is going to be in the ringer.

15 Q. Right. Okay. So if their ass was going to be in
16 the ringer yours would be too, right, because you
17 participated up in this gym, correct?

18 A. Yes. I was up there, yes, sir.

19 Q. Uh-huh. And knowing what Blakely had said and
20 fearing a federal investigation you went and wrote your
21 statement and intentionally left out your participation in
22 the altercation with Dean, right?

23 A. Yes, sir.

24 Q. All right. And I think you said you did it cause
25 you didn't want to be involved, right?

1 A. Yes, sir.

2 Q. Okay. But you were involved, weren't you?

3 A. Yes, sir.

4 Q. Now, my understanding is you went from Macon State
5 Prison to Dooly State Prison and you signed up there,
6 right?

7 A. Yes, sir.

8 Q. Okay. And I guess you started as a sergeant there,
9 correct?

10 A. No, sir. I left Macon State as a sergeant and when
11 I got to Dooly I was -- that was my promotion. They had a
12 lieutenant board in which I went up for and I made
13 lieutenant, so on August 16th when I started I was a
14 lieutenant at Dooly State Prison.

15 Q. Oh, okay. Good deal. And when you went to Dooly
16 State Prison did you tell them that you had lied to the
17 Georgia Bureau of Investigation about your participation
18 in the Dean incident?

19 MR. CHRISTIAN: Objection, Your Honor. It's not
20 been established he was even interviewed by the Georgia
21 Bureau of Investigation.

22 THE COURT: What?

23 MR. CHRISTIAN: It's not been established that
24 he was even interviewed by the Georgia Bureau of
25 Investigation. He's just accused him of lying to the

1 Georgia Bureau.

2 THE COURT: Are you talking about the
3 statements. The two statements he made?

4 MR. WOLFE: Yes -- well not the two -- he's made
5 several statements. But I'll rephrase the question. I
6 understand.

7 BY MR. WOLFE:

8 Q. Okay. Did you ever speak to the Georgia Bureau of
9 Investigation with regard to your conduct on December 16th
10 of 2010?

11 A. No, sir.

12 Q. Aha. Might that have been, do you think, because
13 you never said you were up there or participated?

14 MR. CHRISTIAN: Objection, Your Honor. He's
15 asking what GBI was doing in its investigation --

16 THE COURT: I'll sustain that.

17 MR. WOLFE: Okay.

18 BY MR. WOLFE:

19 Q. All right. But you knew that the Georgia Bureau of
20 Investigation, before you left Macon State Prison, began
21 an investigation into the Dean incident on January 5th of
22 2011, correct?

23 A. Yes, sir.

24 Q. Okay. And you knew that they were interviewing
25 witnesses that were participants, correct?

1 A. Yes, sir.

2 Q. And you knew that certain of the other people like
3 Redden, for example, had already started telling on
4 everybody in his words, right?

5 A. I didn't know who was saying what.

6 Q. Oh, okay. But you knew folks were saying stuff.
7 Did you ever go to the Georgia Bureau of Investigation and
8 say, hey, with regard to your investigation, I was there
9 and here's what I did?

10 A. No, sir.

11 Q. Okay. All right. All right. Did you ever tell the
12 people at Dooly State Prison anything about your
13 participation in the Dean incident when you were applying
14 for your job there?

15 A. No, sir.

16 Q. And you've told the ladies and gentlemen of the jury
17 that you resigned from Dooly State Prison, correct?

18 A. Yes.

19 Q. But, in fact, the fact that were going to be
20 arrested and charged with Eighth Amendment violations, you
21 would have been fired from there anyway, correct?

22 A. Yes, sir. If I would have been arrested.

23 Q. Right. And if you knew about it do you believe they
24 would -- if they knew about it, when you applied for your
25 job, do you think they ever would have hired you?

1 A. I can't answer that question.

2 Q. All right. All right. Now, my understanding is
3 that at some point in August of 2012 is when you first --
4 is that when you first spoke with the FBI?

5 A. Yes, sir.

6 Q. Did -- hang on one second. Had you ever made a
7 previous appointment to meet with the FBI and not gone?

8 A. No, sir.

9 Q. No. Because they didn't know about you, right?

10 A. I guess no, sir.

11 Q. Okay. But in August of 2012 you went and met with
12 them and that was the -- that was actually the second time
13 that you had to do anything affirmatively with regard to
14 your participation in the Dean incident, right?

15 A. Yes, sir.

16 Q. And so when you got the opportunity to come clean
17 and tell the truth, did you do that on your first visit
18 with the FBI?

19 A. No, sir.

20 Q. And, in fact, you lied to them again on that
21 occasion, right?

22 A. Yes, sir.

23 Q. Okay. All right. Now, leading up to August of
24 2012 -- is August 2012 the first time your wife found out
25 what you had done in the Dean incident?

1 A. Yes, sir.

2 Q. Did you tell her that you had lied in August? In
3 August of 2012 when you went and met with the FBI and lied
4 to them, you went home and told her you had lied, right?

5 A. Yes.

6 Q. After sitting in the park and lamenting upon the
7 past 20 months, right?

8 A. Yes.

9 Q. All right. Okay. And she told you the story about
10 her and your kids and everything else and convinced you to
11 tell the truth, right?

12 A. It was something I was going to do before she said
13 anything about it anyway after I had talked to her.

14 Q. Okay. Well, if it was something you were going to
15 do anyway why did you say just a few moments ago that that
16 was part of the reason that you did it?

17 A. You asked me did she convince me.

18 Q. Right.

19 A. I mean, that was part of the reason. That wasn't
20 the full --

21 Q. Oh, okay.

22 A. -- the full reason.

23 Q. But you were going to do it anyway, right?

24 A. After I had talked to her and I heard the pain in
25 her voice I knew that I wasn't going to drag her through

1 that.

2 Q. Right. So you go back and you talk to the FBI a
3 second time, right?

4 A. Yes, sir.

5 Q. And when you talk to them and tell them the truth,
6 do you tell them the entire truth?

7 A. No, sir.

8 Q. So you lied again. That's the second time that you
9 lied to the Georgia -- I mean the Federal Bureau of
10 Investigation with regard to a federal investigation,
11 right?

12 A. Yes, sir.

13 Q. But on the third time, I guess after more
14 conversation, you go back and finally tell the truth,
15 right?

16 A. Yes, sir.

17 Q. All right. Or at least you tell them what you think
18 they want to hear, correct?

19 A. No, sir. I tell them the truth.

20 Q. Oh, okay. All right. How do we know when you're
21 telling the truth?

22 MR. CHRISTIAN: Objection, Your Honor.

23 MR. WOLFE: I'll withdraw the question.

24 BY MR. WOLFE:

25 Q. Now, in exchange for your testimony at the grand

1 jury Mr. Christian tore up the subpoena, right?

2 MR. CHRISTIAN: Objection, Your Honor. It's
3 mischaracterizing the grand jury transcript.

4 MR. WOLFE: I'm just asking him. I don't
5 know -- I'm not talking about a transcript.

6 THE COURT: It's only a question at this point.

7 MR. CHRISTIAN: There has to be a good faith
8 basis for that question, Your Honor.

9 THE COURT: Well, that's true.

10 MR. WOLFE: I believed that Mr. Christian tore
11 up the subpoena.

12 MR. CHRISTIAN: That is not what's in the
13 transcript, Your Honor, that I tore --

14 THE COURT: Well, he says he believes it. At
15 this point --

16 MR. CHRISTIAN: In exchange for his testimony?
17 That's not what's in the transcript --

18 MR. WOLFE: Okay. I will rephrase the question.
19 I certainly don't want to -- I'm not focussing on the
20 transcript.

21 BY MR. WOLFE:

22 Q. Do you remember Mr. Christian tearing up a subpoena
23 for any reason?

24 A. Yes, sir. He gave me the opportunity and told me
25 that I didn't even have to testify in front of the grand

1 jury if I didn't want to.

2 Q. Okay. All right. But he tore up the subpoena, and
3 you agreed to testify, correct?

4 A. Yes, sir.

5 Q. And the way I understand the reason that you
6 testified is you decided to -- I think your term was -- do
7 the right thing, right?

8 A. Yes, sir.

9 Q. And at that time you knew what the government was
10 looking for you to say, correct? About what you did and
11 what you saw?

12 A. Yes, sir.

13 Q. All right. And you agreed to say what you did and
14 what you saw, right?

15 A. Yes, sir.

16 Q. In exchange for whatever your plea agreement gives
17 you in exchange for, whatever you have, Mr. Cox, the
18 lawyer for -- you know Mr. Cox, don't you?

19 A. Yes, sir.

20 Q. And in exchange for that you agree to testify,
21 right?

22 A. Yes.

23 Q. Here today?

24 A. Yes.

25 Q. All right. Now, you indicated that the chain of

1 command -- I think you testified that there was a CERT
2 sergeant and then above the CERT sergeant was Deputy
3 Warden Hinton; is that correct?

4 A. Yes.

5 Q. Well, you know that above the CERT sergeant is the
6 unit manager, correct?

7 A. No.

8 Q. No? How about Captain Davis?

9 A. The CERT team is a lead group that falls directly up
10 under deputy warden and the warden here --

11 Q. Oh, okay. So on the reports and those sorts of
12 things with regard to people who signed off on the
13 statements you think Deputy Hinton Warden -- Deputy Warden
14 Hinton should have signed any documents in that regard?

15 A. I'm not understanding your question.

16 Q. All right. Never mind. I'll withdraw the question.
17 But you say that that's the chain of command, right?

18 A. Correct.

19 Q. Now, my understanding is that you actually went and
20 talked with Deputy Warden Hinton, correct?

21 A. Yes.

22 Q. And you went and talked with him about the Dean
23 incident, right?

24 A. Not directly about the Dean incident. It just came
25 up.

1 Q. Oh, Dean just came up?

2 A. Yes.

3 Q. But your testimony on direct examination was that
4 there was a conversation about the Dean incident, right?

5 A. Yes, sir.

6 Q. Okay. And this is what you testified to, that when
7 it came up Hinton said to you -- you weren't acting in an
8 undercover capacity, were you? For any law enforcement
9 agency when you were talking with him, were you?

10 A. No, sir.

11 Q. Okay. Hinton said, "I don't know why they did that,
12 right?" That's what you just testified to?

13 A. Yes, sir.

14 Q. And then he said, "They shouldn't have done that,"
15 correct?

16 A. Correct.

17 Q. And then he said, "Maybe if I had been here it
18 wouldn't have happened," right?

19 A. Repeat that again.

20 Q. And then he said, "Maybe if I had been here it
21 wouldn't have happened", right?

22 A. Something like that, yeah.

23 Q. All right. Thanks.

24 THE COURT: Ms. Gomez?

25 CROSS EXAMINATION

1 BY MS. GOMEZ:

2 Q. Mr. McKenzie, good morning. I represent Mr. Lach.

3 A. Good morning.

4 Q. Mr. McKenzie, this conversation that you claim that
5 you had with my client, Mr. Lach, actually took place at a
6 house party. Do you remember that?

7 A. Which one? It was --

8 Q. You said you had a conversation with Mr. Lach at a
9 social gathering?

10 A. Yes. Yes, ma'am.

11 Q. Okay. If you don't remember, that's fine. I just
12 want your honest -- your answers to be honest so --

13 A. Yeah, I remember.

14 Q. All right. On direct you testified about a
15 conversation you had with Mr. Lach at a social gathering?

16 A. Yes.

17 Q. All right. That social gathering occurred at a
18 man's house named Carlos Watts?

19 A. No. That conversation that I testified to occurred
20 at one of his friend's house at Oglethorpe.

21 Q. Which friend is that?

22 A. I can't think of his name. I know we was at a
23 house, it was a trailer or something like that outside on
24 Highway 49.

25 Q. All right. And that's the conversation where you

1 claim that Mr. Lach supposedly said that Mr. Dean -- he
2 wasn't worried about it because Mr. Dean wouldn't remember
3 anything. Is that when you claim that conversation took
4 place?

5 A. Yes, ma'am.

6 Q. Okay. Well then, let me ask you this. During that
7 conversation did Mr. Lach tell you he didn't want to talk
8 to you?

9 MR. CHRISTIAN: Objection, Your Honor. You
10 can't put in the defendants's statements.

11 THE COURT: Ms. Gomez?

12 MS. GOMEZ: Your Honor, specifically as to this
13 conversation he's already testified to what my client said
14 to him, okay. And during that conversation Mr. Lach, he
15 claims that Mr. Lach --

16 MR. CHRISTIAN: Objection, Your Honor. If we're
17 going to just have her read her client's statement into
18 the record --

19 THE COURT: What's the reason why you think you
20 can admit your client's statement?

21 MS. GOMEZ: Your Honor, the witness said what my
22 client had said to him about Mr. Dean.

23 THE COURT: Right.

24 MS. GOMEZ: Okay. Excuse me? Yes, I'm going to
25 state of mind about my client. They're having this

1 conversation at -- there's two different conversations I
2 think I'm aware of. So I'm trying to find out if it's
3 this one or some other one.

4 MR. CHRISTIAN: Your Honor --

5 THE COURT: You're not clear which of the two
6 conversations Mr. McKenzie was talking about --

7 MS. GOMEZ: Your Honor, we were provided some
8 information --

9 THE COURT: -- when he testified to the
10 statement --

11 MS. GOMEZ: Yes, sir, yes Judge. We were
12 provided some information that my client supposedly had a
13 conversation. He testified to it on direct. I'm trying
14 to figure out which one we were provided with information
15 about.

16 THE COURT: Well, see if you can determine that
17 first without using your client's other statements. For
18 example, were there two conversations?

19 MS. GOMEZ: Yes, sir.

20 BY MS. GOMEZ:

21 Q. Did you have more than one conversation with my
22 client about what occurred?

23 A. Yes, sir -- I mean yes, ma'am, I'm sorry.

24 Q. The one that you testified earlier to was that the
25 one you were talking about at Oglethorpe?

1 A. Yes.

2 Q. And that's the one when you -- can you tell us what
3 you claim Mr. Lach said because you testified to it on
4 direct?

5 A. He was like, they were told that whenever an inmate
6 puts his hands on a staff member that they'll take them to
7 the gym and handle them. And that Inmate Dean --

8 Q. That's -- is that -- that's the Oglethorpe
9 conversation on direct? You testified about Lach saying
10 that Dean could not remember anything.

11 A. I was getting to that point.

12 Q. Okay. So now you're adding more. Okay. Go ahead?

13 MR. CHRISTIAN: Objection, Your Honor.

14 THE COURT: Yeah, no commentary.

15 MS. GOMEZ: All right.

16 BY MS. GOMEZ:

17 A. THE WITNESS: And also that -- that, the state
18 didn't have anything because Dean couldn't remember
19 anything.

20 Q. All right. Where did that conversation take place
21 at the Oglethorpe residence?

22 A. Outside.

23 Q. On the front porch, correct?

24 A. Backyard.

25 Q. Do you remember telling Mr. Lach you had to do what

1 you had to do?

2 A. That was at Carlos Watts' house, yes.

3 Q. Okay. Now when did the Carlos Watts' conversation
4 take place?

5 A. That was after I had pled out.

6 Q. Excuse me?

7 A. That was after I pled out. I don't remember exactly
8 when.

9 Q. All right. Do you remember when you pled out?

10 A. Uh --

11 Q. What year at least?

12 A. 2012.

13 Q. First part of the year or second part of the year?
14 Meaning first part, first six months, or the back part of
15 the year, second six months?

16 A. Second six months.

17 Q. Okay. So at some point in 2012, you remember having
18 a conversation with Mr. Lach at Carlos Watts' house?

19 A. Yes.

20 Q. And during that conversation is when you told him I
21 had to do what I have to do?

22 A. Yes.

23 Q. Isn't it true you also told him that you had to do
24 what you had to do because they said they were going to
25 get you for tax evasion or something else?

1 A. No, ma'am.

2 Q. You never said that?

3 A. No, ma'am.

4 Q. Now, Mr. McKenzie, the conversation that you had
5 with Mr. Lach is it not correct that conversation took
6 place on the front porch of Carlos Watt's house?

7 A. No, ma'am.

8 Q. Where did that conversation take place?

9 A. Back porch.

10 Q. All right. On Oglethorpe, you said back yard?

11 A. Correct back yard.

12 Q. Okay. And at Carlos Watts' house you were in the
13 back area again?

14 A. Yes, ma'am, the back porch.

15 Q. Who was present when the back porch conversation at
16 Carlos Watts' house took place?

17 A. Just me and Lach.

18 Q. You're sure about that?

19 A. That's what I remember.

20 Q. When you said that you witnessed Mr. Dean being
21 thrown to the ground, which officer again did that that
22 you saw?

23 A. Officer Redden.

24 Q. Okay. Just tell us, you know, what did you hear?

25 Did you hear Mr. Dean's body hit the ground with a thud?

1 A. It made a noise when he hit the ground. I can't
2 remember exactly what the noise was, but, I mean, it made
3 a noise when it hit the ground.

4 Q. Mr. Dean made a noise? He made a noise verbally or
5 his body made a noise when it hit the ground?

6 A. Body.

7 Q. Okay. Thank you.

8 THE COURT: Mr. Hogue?

9 CROSS EXAMINATION

10 BY MR. HOGUE:

11 Q. Mr. McKenzie, I'm going to ask you just a few
12 questions. I represent Derrick Wimbush.

13 A. Yes, sir.

14 Q. At the very end of your direct examination earlier
15 this morning when Mr. Christian was asking you questions,
16 you had covered your two meetings with the FBI on
17 August 15th, 2012, and you told the jury that you lied to
18 them the first time, left, talked to your wife, went back,
19 told them a little bit more, but then lied to them the
20 second time. Do you remember that?

21 A. Yes, sir.

22 Q. Okay. So, Mr. Christian asked you what happened
23 next and you talked to your wife and she told you you need
24 to make this as right as possible. And then
25 Mr. Christian's last question today on direct was: "What

1 did you do the next morning?" And you answered, told the
2 jury -- the next day, when you met with the grand jury,
3 you told them everything, right?

4 A. Yes, sir.

5 Q. And when you came and testified to the grand jury it
6 was here in this very courthouse?

7 A. Yes, sir.

8 Q. A different room, upstairs and across the way,
9 right?

10 A. I think so, sir. I'm not sure.

11 Q. All right. But it was similar in this regard when
12 your testimony began that day somebody, perhaps the court
13 reporter or Mr. Christian, gave you the oath just like you
14 got this morning, right?

15 A. Yes, sir.

16 Q. And you took that oath and then you answered a bunch
17 of questions, right?

18 A. Yes, sir.

19 Q. And told the grand jury everything, right?

20 A. Could you repeat that question, sir.

21 Q. You told the grand jury everything?

22 A. Yes, sir.

23 Q. Now let me take you back -- we'll come back to what
24 you told them in a moment -- but let me take you back to
25 the day in December, December 16th, 2010, the Dean

1 incident. When the code three went out, like when a code
2 three goes out any time, that's an emergency, right?

3 A. Yes, sir.

4 Q. And guards begin to move and they move fast to get
5 to their colleague, right?

6 A. Yes, sir.

7 Q. Who is in danger, perhaps even life threatening
8 danger, right?

9 A. Yes, sir.

10 Q. And so, is it fair to describe this situation, Mr.
11 McKenzie, when a code three goes out it's chaotic, people
12 are running to the scene, right?

13 A. Yes, sir.

14 Q. And like Mr. Wolfe pointed out to you there's
15 seventeen hundred plus inmates in this prison, Macon State
16 Prison, at that time, right?

17 A. Yes, sir.

18 Q. And we don't know yet and may never know how many
19 guards there are, but there's, what, on any given shift or
20 on that day, dozens of guards on duty?

21 A. Thirty -- well, I mean, overall throughout the whole
22 institution?

23 Q. Right.

24 A. Oh I'm not sure.

25 Q. A bunch?

1 A. Yes.

2 Q. You said 30, is 30 a guess, would there be more than
3 that?

4 A. Well, I thought you were speaking just for the
5 shift. The shift would usually be around about 42, 44, if
6 I'm not mistaken.

7 Q. Okay.

8 A. That's just for first shift. That's not counting
9 split shift and --

10 Q. Well, we're only talking about the one shift that's
11 on duty when the code three got called, right?

12 A. Okay.

13 Q. Right?

14 A. Right.

15 Q. So you're estimating, and that's good enough for our
16 purposes, around 40 or so guards?

17 A. Yes, sir.

18 Q. And that includes the CERT team members?

19 A. No, sir.

20 Q. So there's an additional six CERT team members or
21 seven?

22 A. That's what I was telling you, the split shift, the
23 CERT team follows up on the split shift.

24 Q. Okay. So there might even be less than six CERT
25 team members?

1 A. I'm not understanding what you asking.

2 Q. Well, I'm just trying to find out roughly how many
3 guards are at the prison that day when the code three goes
4 out?

5 A. I wouldn't have the answer to that.

6 Q. All right. Well, where did the 40 something come in
7 then?

8 A. That's the number --

9 Q. Was that an answer to that?

10 A. That's the number of first shift staff that usually
11 take the men -- the housing units in the prison.

12 Q. All right. So whatever the number may be it's far
13 less than there are inmates, we can agree. But let me
14 talk about the situation. Code three is called out, it's
15 an emergency, it's dangerous and you know as a trained
16 officer and a former CERT team member it could get even
17 more dangerous if it's not quickly contained, right?

18 A. Yes, sir.

19 Q. And by contained that means getting to the scene of
20 the altercation or the assault on a guard as well as
21 looking out for all the inmates who are out and about at
22 the time the code three goes out, right?

23 A. Yes, sir.

24 Q. And so while there are guards who are running to the
25 scene of the danger, of their fallen colleague, that means

1 that there are inmates in the chow hall who have less
2 guards guarding them, right? Because some of them have
3 left to go the danger?

4 A. Yes, sir.

5 Q. And inmates who are in the big yard, the east yard,
6 milling around doing whatever they're doing out there on
7 an afternoon, there are less guards guarding them because
8 many of them have rushed to the scene of the danger,
9 right?

10 A. Yes, sir.

11 Q. And even in the respective housing units around the
12 prison guards are leaving those housing unit to come to
13 the scene?

14 A. Yes, sir.

15 Q. Leaving fewer guards to guard those inmates, right?

16 A. Yes, sir.

17 Q. Which might increase the danger in all of those
18 areas, some guards need to stay back and watch those
19 inmates right? I mean, you just don't leave the chow
20 hall completely unattended or do you?

21 A. No, they don't.

22 Q. Some guards stay back and guard the inmates, right?

23 A. At least to clear it out.

24 Q. At least to what?

25 A. Clear it out.

1 Q. Clear it out. Contain it, get it under control, put
2 inmates in a safe place?

3 A. Yes.

4 Q. Like go back to your dorm rooms or your cells,
5 right?

6 A. Yes.

7 Q. All right. Now, some officers then even CERT
8 officers will take up the task during this chaotic
9 emergency situation of clearing areas or getting
10 containment of inmates, right?

11 A. During like a code three?

12 Q. Right.

13 A. Oh, CERT usually go, they go into that situation.

14 Q. Well we saw, or you saw, the jury didn't, but you
15 watched some of that situation in the E dorm. You didn't
16 see the entire CERT team in the E dorm, you saw two or
17 three of them?

18 A. Correct.

19 Q. And you couldn't identify who they were even looking
20 at the screen earlier today, right?

21 A. No, sir.

22 Q. Well, at any rate, you didn't see all of the CERT
23 team members in E dorm, correct?

24 A. Sir?

25 Q. You did not see all of the CERT team members in E

1 dorm, correct?

2 A. No, sir. On the footage I saw, no.

3 Q. So if all the CERT team members are responding to
4 the code three by getting to their colleague who's under
5 assault, you didn't see all of them so some of them are
6 someplace else. That follows, doesn't it?

7 A. You didn't see all of them come in on the camera,
8 but if the inmate, the one that's being locked down, is
9 already being headed out the door, there is no need for
10 them to come in.

11 Q. All right. Well, it sounds like we're agreeing.
12 You didn't see them all come in E dorm because you saw
13 Dean being escorted out of E dorm by two of CERT team
14 members, right?

15 A. Yes, sir.

16 Q. Okay. So you, being one of the guards in the midst
17 of this chaotic and dangerous situation, you know, after
18 it's all over, you might not remember every detail
19 accurately, that's fair to say, isn't it? Like who did
20 what, what guards were where, that sort of thing?

21 A. I think I remember pretty well.

22 Q. You can remember it pretty well?

23 A. Yes, sir.

24 Q. All right. Well, let's go to your grand jury
25 testimony then. After the two lies to the FBI it was the

1 very next day that you came into this courthouse and
2 testified to the grand jury, right?

3 A. Yes, sir.

4 Q. That would have been on August the 16th of 2012,
5 roughly 20 months after the Dean incident?

6 A. Correct.

7 Q. And so now you're there testifying to the grand
8 jury, being questioned by the government lawyers and
9 you're doing it from memory, right?

10 A. Yes.

11 Q. You didn't have any notes with you, did you?

12 A. No, sir.

13 Q. You didn't have a video playing as you testified,
14 right?

15 A. No, sir.

16 Q. Now have you reviewed your grand jury testimony
17 lately?

18 A. Yes.

19 Q. How recently?

20 A. This morning.

21 Q. You read the whole thing this morning?

22 A. Naw, I didn't read the whole thing. I just went
23 through it.

24 Q. Well, when is the last time you read the whole
25 thing?

1 A. I've never read the whole thing.

2 Q. Okay. So you reviewed some parts of it, I guess, in
3 preparation for your testimony today?

4 A. Yes.

5 Q. You were asked to do that by the government lawyers,
6 or by your own lawyer?

7 A. No, I was just given the opportunity to view it if I
8 wanted to. If I didn't, I didn't have to.

9 Q. Okay. Let's see if we can agree on this part, Mr.
10 McKenzie. When a person says, "I think", when you say it
11 or when you hear me say it or anyone else, when they say,
12 for example, I asked you who won Super Bowl X, do you
13 know?

14 A. No, sir.

15 Q. What if you said or you asked me and I said, "Well,
16 I think it was the Pittsburgh Steelers." When I say, "I
17 think" you would agree with me that means, well, I'm not
18 sure; I'm not certain; I have a doubt about it. Is that
19 what you would believe, I mean when I say, "I think" it
20 was the Steelers?

21 A. Uh --

22 Q. That's what it would mean to you if said --

23 A. Rephrase your statement. Rephrase your statement
24 again.

25 Q. Okay. If a person is having a conversation with you

1 and they say in response to a question you've asked them,
2 well, I think, and then they answer, do you agree with me
3 that the phrase, "I think", means I'm not really sure, I
4 have a little doubt, I'm going to give you the best answer
5 I can give you but I've got some uncertainty about it.
6 Does this make sense to you? Is that what you understand
7 when we say, "I think?"

8 A. Yes, sir.

9 Q. Okay. And when you say, "I think", that's what
10 you're doing, right? You're saying, "I might be wrong,
11 I'm not sure, I'm giving you the best I've got".

12 A. No, sir.

13 Q. It means something different when you say it? It
14 means what? I'm sure? I'm certain?

15 A. When I say, "I think so" I'm saying that's my answer
16 for yes.

17 Q. Okay. All right. Well, I'm going to -- you don't
18 have it up there with you, your grand jury testimony, do
19 you have that? I'm going to approach and give you a copy
20 of it. I've flagged a couple of places in it but I'll
21 take the two of them. If you would, go to page eight.
22 That should be the first of the red flags in there. Are
23 you there?

24 A. Yes, sir.

25 Q. Okay. Let me get you oriented to what's going on on

1 page eight. Okay. It was Mr. Christian, you remember
2 him, he was the one asking you questions or was it Ms.
3 Boyd?

4 A. It was Mr. Christian.

5 Q. Okay. And you see this is a transcript. So the
6 lines are numbered and there's a Q that stands for
7 question and an A that stands for answer. Are you with
8 me?

9 A. Yes, sir.

10 Q. So the Qs are the things Mr. Christian is saying and
11 the As, the answers are what you are saying. Do you agree
12 with that?

13 A. Yes, sir. Yes, sir.

14 Q. Line nine question: Who from the CERT team did you
15 see escorting the inmate? Now to get the context, you
16 know we're talking about Inmate Dean being escorted from E
17 dorm, right?

18 A. Yes, sir.

19 Q. And you understand the word who to mean the
20 identities of people, their names, right?

21 A. Yes, sir.

22 Q. Answer, on line 11: I don't remember. It looked
23 like the whole CERT team. That was your answer?

24 A. Yes, sir.

25 Q. Okay. And what you saw today we agreed with you

1 looked at it, the escorting out of E dorm was a couple of
2 CERT team members and there's more than two, right?

3 A. Yes, sir.

4 Q. All right. Let's go to the next page, page nine and
5 let me get there with you. Now on page nine near the top,
6 on line four, you've just described the escort, the
7 position they were holding Dean when they took him out,
8 hands on his forearms and they had him handcuffed from the
9 rear. And then at line four Mr. Christian asks you,
10 "roughly how many officers did you see there in the gym
11 with Dean?" And your answer was this, I'm going to read
12 it exactly, "six, I think it was six." Did I read it
13 right?

14 A. Yes, sir.

15 Q. Did I say it right?

16 A. Yes, sir.

17 Q. Okay. Nowhere else though in all of this testimony
18 at the grand jury did you name the six CERT team officers
19 you think were in the gym, did you?

20 A. No, sir.

21 Q. And you can review it -- okay, you have, all right.
22 Good. Now, let me move onto another area. During this
23 chaotic emergency --

24 THE COURT: Mr. Hogue, at this point it's 12:00.
25 We need to take our second break.

1 MR. HOGUE: May I say this, Your Honor? This is
2 literally my last question. I'm stop but it's like --

3 THE COURT: No, no. No, that's -- if you've got
4 one more question.

5 MR. HOGUE: It's really just maybe one minute
6 and I'm done.

7 THE COURT: All right.

8 BY MR. HOGUE:

9 Q. So, I want to take you to the part where when this
10 chaotic dangerous situation is going on and there's
11 escorts taking the inmate across this big open yard, to
12 get from E dorm to medical you have to pass through
13 several doors or gates or both, right?

14 A. Depending on which way you go.

15 Q. Well, the way they went, that way, where you go
16 through the sally port -- the sally port is a sally port
17 because it has two doors and you lock the first one when
18 you're in it and then the second one gets unlocked so you
19 can go out. So there's always one of the two doors
20 locked, right?

21 A. Unless there's an emergency situation with that one
22 you can override it.

23 Q. Okay. And so in an emergency the escorts are doing
24 the unlocking of the doors or someone running in front of
25 them is unlocking doors for them?

1 A. During this particular escort -- this incident?

2 Q. Do you happen to know?

3 A. No. I'm asking, are you talking about during this
4 particular incident?

5 Q. Or generally. But if you know in this incident you
6 can answer that question.

7 A. I don't know in this incident. But generally if
8 someone's ahead they go ahead unlock the gate. If not,
9 sometimes the person doing the escort has to unlock the
10 gate.

11 Q. And the persons doing the escorting, of course,
12 they've got their hands full, they've got an inmate on
13 them, so they're relying on other officers to come behind
14 them and lock doors and lock gates to assist in containing
15 the inmates, right?

16 A. Sometimes during -- depending on the severity of the
17 incident, sometimes that stuff gets overlooked.

18 Q. Sometimes that, I'm sorry?

19 A. It gets overlooked.

20 Q. Overlooked. But if it doesn't get overlooked and
21 there's somebody on their game, they're coming behind to
22 help contain inmates and locking doors escorting guards
23 have unlocked, right?

24 A. Yes.

25 Q. Because that's the safe secure thing to do, right?

1 A. Yes.

2 Q. All right. And you can't remember today because of
3 the chaos and all that who's locking doors or who's
4 unlocking doors, do you?

5 A. Going across the yard?

6 Q. Right.

7 A. No.

8 MR. HOGUE: Now literally my last bit, Your
9 Honor.

10 BY MR. HOGUE:

11 Q. When you said earlier today that when you entered
12 the gym after Dean had been taken into the gym, the door
13 was already unlocked, wasn't it?

14 A. Yes.

15 Q. And you were only in there a few seconds, long
16 enough to do the finger swiping thing and see Redden do
17 what he did and then you left, right?

18 A. Yes, sir.

19 Q. And when you left out the gym door it was still
20 unlocked, wasn't it?

21 A. No, sir.

22 Q. Well, that's what you said earlier today, you left
23 through the unlocked door. Did I mishear that?

24 A. I left through an unlocked door?

25 Q. That's what you said. You left the gym through the

1 same door you entered the gym, right?

2 A. Right. When I left out the door was locked -- I
3 mean unlocked.

4 Q. It was unlocked?

5 A. Right.

6 Q. Right? Okay. So I was correct, I heard you
7 correct. You entered the gym behind the escort with Dean
8 and when you entered the door was unlocked?

9 A. Yes.

10 Q. And then when you did the thing you described and
11 you left out that same door it was still unlocked, right?

12 A. Yes.

13 Q. Okay. And you have no idea then who or how much
14 later somebody came from the yard to that gym door,
15 entered it and locked it or whether it even got locked.
16 You have no idea, do you?

17 A. I locked that door on the way out.

18 Q. You did?

19 A. Yes.

20 Q. Okay. You can't say for sure because you said you
21 think there were six members in there and you never named
22 Wimbush to the grand jury --

23 THE COURT: Now we're going long, Mr. Hogue. Is
24 this your last question then? If not we'll take a break
25 and then --

1 MR. HOGUE: Well, I'll stop.

2 THE COURT: -- you can finish.

3 MR. HOGUE: I'll stop there then, Your Honor,
4 and I'll pick up later.

5 THE COURT: All right, ladies and gentlemen, you
6 may go to the jury room. And for those of who you bought
7 your lunches they should be there waiting for you.

8 (JURORS EXIT COURTROOM)

9 THE COURT: All right. I have got 12:05 p.m..
10 We'll reconvene at 12:30 p.m.

11 (RECESS)

12 (RECONVENED)

13 THE COURT: Mr. Hogue you may proceed.

14 BY MR. HOGUE:

15 Q. All right. Mr. McKenzie, I really was at the very
16 end here. So let's pick back up where we were. So if you
17 left the gym through the door that was unlocked when you
18 got there, and then you locked it behind you, and that's
19 what you say you remember, right?

20 A. Yes, sir.

21 Q. Then, any other officer, even including a CERT team
22 member, even including Derrick Wimbush, but anyone who
23 wants to come into the gym after you've left has to have a
24 key to unlock the door, right?

25 A. Yes, sir.

1 Q. And then if they want that door locked when they
2 enter the gym, they have to turn right back around and
3 lock it, and then you can go across the gym and there's
4 another door, right?

5 A. Yes, sir.

6 Q. And if the escort team went out that door, with
7 Dean, and left it unlocked, then whatever officer got
8 through the gym would find that door unlocked, and when
9 going through it would want to lock it to contain security
10 and to contain the inmates?

11 A. That would all depend on the person that was going
12 through that gate.

13 Q. Got you. All right. Last question. You have never
14 had any conversation with Derrick Wimbush about the use of
15 force against any inmate, including Dean and the others
16 named in this case, correct?

17 A. No, sir.

18 Q. That is correct? You have not?

19 A. Yes, it is. Correct.

20 MR. HOGUE: That's all I have.

21 THE COURT: Mr. Pate?

22 MR. PATE: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. PATE:

25 Q. Mr. McKenzie, good afternoon.

1 A. Good afternoon.

2 Q. My name is Page Pate, and I represent Tyler Griffin.
3 Do you remember Tyler Griffin?

4 A. Yes, sir.

5 Q. Okay. Earlier in your testimony you did, today,
6 name some individual CERT team members who were present in
7 the gym at the time of the Terrance Dean incident,
8 correct?

9 A. Yes, sir.

10 Q. Just to be clear, because we've heard a lot of names
11 today, Tyler Griffin was not in the gym at the time,
12 right?

13 A. No, sir.

14 Q. You did mention a name, Darren Douglass-Griffin, but
15 that's a different person, correct?

16 A. Yes, sir.

17 Q. Tyler Griffin was nowhere near the gym on that day
18 as far as you're aware?

19 A. Yes, sir.

20 Q. In fact, Tyler Griffin was not even on the CERT team
21 at the time of this incident where Mr. Dean attacked the
22 officer, correct?

23 A. I don't remember him being on it, no, sir.

24 Q. You never served on the CERT team with Tyler
25 Griffin, did you?

1 A. No, sir.

2 Q. Tyler Griffin was on the CERT team for a very short
3 period of time at the end of 2010, correct?

4 A. I can't remember how long he was on the team.

5 Q. And based on your recollection, as far as your
6 duties that day, and we're talking now December 16 of
7 2010, Tyler Griffin wasn't even at the prison at that
8 time, was he?

9 A. I don't remember.

10 MR. PATE: Your Honor, may I approach the
11 witness and show a document?

12 THE COURT: You may.

13 BY MR. PATE:

14 Q. Mr. McKenzie, I'm giving you a document that I've
15 marked as Griffin Exhibit Number 9, and I just want to ask
16 you to flip through those pages and tell me if you
17 recognize what that is?

18 A. This is a daily staffing roster.

19 Q. And what is a daily staffing roster?

20 A. It's basically -- it basically is a roster that lets
21 you know where each of the individual officers are going
22 to be assigned and whatnot, as far as shift wise and what
23 their duties would be that day.

24 Q. And you testified earlier that on this day, and
25 we're talking December 16, 2010, you were a shift

1 supervisor, correct?

2 A. Yes, sir.

3 Q. And so as part of your duties as a shift supervisor
4 you would review the staffing assignment, correct?

5 A. Yes, sir.

6 Q. And does this appear to be the staffing assignment
7 from December 16, 2010, at Macon State Prison?

8 A. Yes, sir.

9 MR. PATE: Your Honor, I would move for
10 admission at this point of Defendant Griffin's Exhibit
11 Number 9.

12 MR. CHRISTIAN: No objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 MR. PATE: And if I may retrieve the exhibit
15 and publish it to the jury?

16 THE COURT: You may.

17 BY MR. PATE:

18 Q. I'm going to take that back from you, but I'm going
19 to put it up on the screen so you can see it.

20 A. Okay.

21 Q. Can you see it, Mr. McKenzie?

22 A. Yes, sir.

23 Q. You had testified earlier during, I believe, Mr.
24 Hogue's questioning about a split shift versus a regular
25 shift, correct?

1 A. Yes, sir.

2 Q. And is it fair to say that the first couple of pages
3 of Defendant Griffin's Exhibit Number 9 indicates who from
4 the split shift was present at the prison?

5 A. Yes, sir.

6 Q. Okay. And is it true that the CERT team members
7 were part of the split shift?

8 A. Yes, sir.

9 Q. All right. And I'm going to turn -- that'll make
10 y'all dizzy. I'll turn it and then put it down to show
11 you the second page, it magically appears. Does that
12 appear to be a list of the CERT team officers from
13 December 16, 2010, at Macon State?

14 A. Yes, sir.

15 Q. Okay. I do not see Tyler Griffin's name on there,
16 correct?

17 A. Yes, sir.

18 Q. Would that indicate to you that he was not a member
19 of the CERT team on December 16, 2010?

20 A. Yes, sir.

21 Q. Now, I do see down below, and I'm going to try this
22 and see if I can do it. Well, almost. Do you see what I
23 did there?

24 A. You circled the annual leave hours.

25 Q. All right. If there was a CERT team member who was

1 not present that day, his name would appear under that
2 section, correct?

3 A. Either there or either under the sick leave section
4 here, sir.

5 Q. Okay. But it would be on this page, right?

6 A. Yes, sir.

7 Q. Regardless of whether he was there or not, if he's
8 on the CERT team his name should be on this page?

9 A. Yes.

10 Q. And again and I'll zoom out so you can see the
11 entire page, or I'll give you the document if you wish.
12 And I see what you're saying. There's sick leave down
13 there at the bottom, you see that? The smaller I get,
14 though, the harder that's going to be. Do you see sick
15 leave, sir?

16 A. Yes, sir.

17 Q. Okay. And it's fair to say that Tyler Griffin's
18 name appears nowhere on the daily staffing assignment for
19 December 16, 2010, for the split shift CERT team?

20 A. That's correct.

21 Q. Okay. I'm going to flip a couple of pages in this
22 exhibit. Well, one more thing before I move on from the
23 CERT team. We had talked a little bit about -- you had
24 mentioned that Darren Douglass-Griffin was present in the
25 gym on that day, and do you see the name Darren

1 Douglass-Griffin as listed under the CERT team?

2 A. Darren Douglass.

3 Q. And that's -- that's the same person, correct?

4 A. Correct, yes, sir.

5 Q. He goes by Darren Douglass or Darren

6 Douglass-Griffin?

7 A. Yes, sir.

8 Q. Okay. And there's no relation, is there, between

9 the two of them?

10 A. Not that I'm aware of.

11 Q. Mr. Douglass-Griffin is African-American, right?

12 A. Yes.

13 Q. Okay. And you know Tyler Griffin?

14 A. Yes.

15 Q. Let me go now to the next page of the document. Can

16 you see that, sir?

17 A. Yes, sir.

18 Q. And I direct your attention to the upper left-hand

19 corner. I'm getting worse instead of better. All right.

20 You can probably see it without me marking all over it.

21 Do you see the upper left-hand corner where it says first

22 A key?

23 A. Yes, sir.

24 Q. And what does that designate?

25 A. That's the shift.

1 Q. That's the shift?

2 A. First shift, A key.

3 Q. Okay. Would any of the CERT officers appear under
4 this shift list?

5 A. No, sir.

6 Q. Okay. And let me move it up a little bit and direct
7 your attention down there at the bottom. Do you see your
8 name?

9 A. Yes, sir.

10 Q. Okay. I'm going to turn the page, still focused on
11 the first shift A key, and ask, under annual leave, if you
12 see Mr. Griffin's name?

13 A. Yes, sir.

14 Q. And would that indicate to you, again, as somebody
15 who has been at Macon State for many years as a shift
16 supervisor, that on this day, December 16 of 2010, Tyler
17 Griffin was not present at the prison?

18 A. That is correct.

19 Q. And moreover Tyler Griffin was not assigned to the
20 CERT team, but he was on a regular shift?

21 A. Yes, sir.

22 Q. As a regular corrections officer?

23 A. Yes, sir.

24 MR. PATE: That's all I have, Your Honor.

25 THE COURT: Any redirect?

1 MR. CHRISTIAN: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. CHRISTIAN:

4 Q. Mr. McKenzie.

5 A. Yes, sir.

6 Q. You were asked about your grand jury testimony on
7 August 16th, 2012. Do you remember those questions from
8 the defense attorneys?

9 A. Yes, sir.

10 Q. You were directed to a line where you said, "I think
11 that there were six CERT officers in the gym with Dean."
12 Do you remember that line?

13 A. Yes, sir.

14 Q. Who do you remember seeing in the gym with Inmate
15 Dean?

16 A. Officer Lach, Officer Wimbush, Officer Rushin,
17 Officer Griffin, Officer Douglass. Hold on, excuse me.
18 Officer Lach, Officer Wimbush, Officer Redden, Officer
19 Bolden, Officer Douglass and Officer Rushin.

20 Q. Okay. How many officers is that?

21 A. Six.

22 Q. So you said I think there were six and you just
23 named the six officers you saw in the gym?

24 A. Yes, sir.

25 Q. Any doubt in your mind at all that Lach was in the

1 gym with Terrance Dean?

2 A. No, sir.

3 Q. Any doubt in your mind at all that Rushin was in the
4 gym with Terrance Dean?

5 A. No, sir.

6 Q. Any doubt in your mind that Wimbush was in the gym
7 with Terrance Dean?

8 A. No, sir.

9 Q. Can you say what Defendant Lach did after you left
10 the gym?

11 A. No, sir.

12 Q. Can you say what Defendant Rushin did after you left
13 the gym?

14 A. No, sir.

15 Q. Can you say what Defendant Wimbush did after you
16 left the gym?

17 A. No, sir.

18 Q. On cross examination you described yourself as a
19 little upset because you understood that Dean had hit one
20 of your officers. Do you remember that?

21 A. Yes, sir.

22 Q. The fact that you were upset, did that allow you,
23 under Macon State policies, to use any kind of force on
24 Dean?

25 A. No, sir.

1 Q. If Dean hit an officer in the dorm, were you
2 allowed, under Macon State policies, to go and hit Dean
3 when he was handcuffed in the gym?

4 A. No, sir.

5 Q. Did you see any legitimate reason, under Macon State
6 policies, to use force on Dean in the gym?

7 A. No, sir.

8 Q. You were also asked by your grand jury testimony
9 where you said basically you didn't remember exactly who
10 from the CERT team had escorted Dean out of the housing
11 unit, out of the dorm. Do you remember that question?

12 A. Yes, sir.

13 Q. You said it looked like the whole CERT team?

14 A. Yes, sir.

15 Q. Can you remind the jury what you go into when you
16 exit the housing unit? Do you go into a sally port?

17 A. Say that again, sir.

18 Q. When you exit the housing unit, when you exit E-2,
19 do you go into a sally port?

20 A. Yes, sir.

21 Q. And you described that door inadvertently or
22 accidentally opening, right?

23 A. Yes, sir.

24 Q. Who was in the sally port when you ended up in the
25 sally port?

1 A. The CERT team and Inmate Dean.

2 Q. Do you remember exactly which CERT officers were in
3 the sally port with you?

4 A. All of them with the exception of Thomas that I can
5 remember.

6 Q. Where did you guys go from the sally port?

7 A. I went to the control room. They went out across
8 the yard.

9 Q. You watched -- and from the yard, where did they go
10 from the yard, just to be clear for folks who are taking
11 notes?

12 A. To the gym, sir.

13 Q. You watched part of a video from the dorm during
14 your cross examination by Mr. Hall's attorney. Do you
15 remember watching part of the video?

16 A. Yes, sir.

17 Q. Did any of the defense attorneys show you any video
18 from the gym?

19 A. No, sir.

20 Q. Did any of the defense attorneys show you any video
21 of Dean as he was being escorted from the dorm to medical?

22 A. No, sir.

23 Q. Have you ever seen that video before?

24 A. No, sir.

25 Q. You just watched a portion of the video from the

1 dorm?

2 A. Yes, sir.

3 Q. In watching that portion of the video did you see
4 Inmate Dean walking on his own power?

5 A. Yes, sir.

6 Q. Did you see any visible injuries to Dean when he was
7 in the dorm?

8 A. No, sir.

9 Q. Did you see Inmate Dean resist the CERT officers in
10 the dorm?

11 A. No, sir.

12 Q. And you were following behind him, right? You were
13 following behind Dean and the CERT officers as they went
14 out of the housing unit, right?

15 A. Yes, sir.

16 Q. You were also asked about the time that certain
17 events happened. Do you remember those questions?

18 A. Yes, sir.

19 Q. I believe you said that you left and Dean left at
20 roughly 2:05. Do you remember that question?

21 A. Yes, sir.

22 Q. And you said that Sergeant Hall ran out of the
23 housing unit at about 2:06, right?

24 A. Yes, sir.

25 Q. You also testified, for folks who are taking notes,

1 that at 2:12, about, you came back with Defendant Rushin
2 and Defendant Hall, right?

3 A. Yes, sir.

4 Q. You came back to the housing unit?

5 A. Yes, sir.

6 Q. Do you know what Defendant Hall did in that
7 six-minute block of time when he's seen running out of the
8 dorm until when he's seen walking back into the dorm?

9 A. No, sir.

10 Q. And you came back to the dorm with Defendant Rushin,
11 right?

12 A. Yes, sir.

13 Q. At 2:12?

14 A. Yes, sir.

15 Q. And you had seen Defendant Rushin in the gym with
16 Dean, right?

17 A. Yes, sir.

18 Q. And then you left the gym?

19 A. Yes, sir.

20 Q. And you said, I believe, on cross examination, you
21 were only in the gym for a matter of seconds?

22 A. Yes, sir.

23 Q. What did you do after you left the gym?

24 A. I came down back in front of E-1, where they had
25 some inmates that they were getting ready to place back in

1 the cell because we were locking down the institution. I
2 assisted pat-searching those inmates and helped them get
3 them, you know, in the building. And then that's when I
4 came back in E-2.

5 Q. So in that time that you doing the pat searching of
6 the inmates in E-1, were you checking your watch to see
7 how long it was taking?

8 A. No, sir.

9 Q. You were focused on the pat down?

10 A. Yes, sir.

11 Q. Do you know what Defendant Rushin was doing while
12 you were patting down inmates in E-1?

13 A. No, sir.

14 Q. Do you know what Defendant Hall was doing while you
15 were patting down inmates in E-1?

16 A. No, sir.

17 Q. The six CERT officers, including Defendant Rushin,
18 that you saw in the gym with Dean, do you know what that
19 group was doing while you were patting down inmates in
20 E-1?

21 A. No, sir.

22 Q. Mr. Hall's attorney showed you a portion of the
23 video, right? From the dorm?

24 A. Yes, sir.

25 Q. Do you recall at some point he stopped?

1 A. Yes, sir.

2 Q. What were you doing at the point that he stopped the
3 video?

4 A. I think that's the part where I was getting a pepper
5 ball gun from Officer Thomas.

6 Q. What did you do after you got the pepper ball gun
7 from Officer Thomas?

8 A. I put it on and started walking around the dormitory
9 giving instructions until I ended up in the middle of the
10 dormitory.

11 Q. Did you have a conversation with any supervisors
12 after that?

13 A. Yes.

14 Q. Which supervisors?

15 A. Mr. Bobbitt and Mr. Blakely and Sergeant Hall were
16 present.

17 Q. And that was in the dorm?

18 A. Yes, sir.

19 Q. And Mr. Hall's attorney didn't show you that clip of
20 the surveillance video, right?

21 A. No, sir.

22 Q. And can you remind the jury what you told those
23 supervisors?

24 A. That they're out there whipping -- they're out there
25 whipping Dean's butt.

1 Q. Now, you have said that you don't remember seeing
2 Sergeant Hall in the gym, right?

3 A. Yes, sir.

4 Q. Now, during the federal investigation has anybody
5 ever told you what to say?

6 A. No, sir.

7 Q. Has anybody ever told you to say that Sergeant Hall
8 was in the gym?

9 A. No, sir.

10 Q. And you were asked about what you hoped to get from
11 the prosecutors, right?

12 A. Yes, sir.

13 Q. You remember those questions?

14 A. Yes, sir.

15 Q. What's your understanding of whose going to control
16 what happens to you going forward?

17 A. The judge, sir.

18 Q. Now, with respect to Mr. Hall, you talked about your
19 testimony on August 16th, 2012 when you appeared before
20 the grand jury. Did you receive a phone call from
21 Defendant Hall close in time to your grand jury
22 appearance?

23 A. Yes, sir.

24 Q. Was it common for you to receive calls from
25 Defendant Hall at that point in time?

1 A. Not really. No, sir.

2 Q. Did you answer that call?

3 MR. JARRARD: Your Honor, I object. This
4 exceeds the scope of my cross examination.

5 THE COURT: This is the first time this has
6 come up. That's for sure.

7 MR. CHRISTIAN: They've certainly indicated that
8 he was pressured to say certain things, and I was just
9 discussing that subject. I can move on though.

10 THE COURT: Well, if you think it's in response
11 to a point made on or attempted to be made on cross
12 examination, if you believe that in good faith, I'll let
13 you continue.

14 MR. CHRISTIAN: I do, Your Honor.

15 BY MR. CHRISTIAN:

16 Q. Did you answer that call from Mr. Hall?

17 A. It was one answer, yes.

18 Q. What did he say when he called?

19 A. He was just basically saying that it was a civil
20 matter, and that the inmate and his family were just
21 trying to get some money.

22 Q. You were also asked about a conversation you had
23 with Mr. Hinton. Do you recall that question?

24 A. Yes.

25 Q. You were asked about a portion of what Mr. Hinton

1 said; is that correct?

2 A. Yes.

3 Q. Can you remind the grand jury the full conversation
4 you had with Mr. Hinton?

5 A. He was like -- he don't know why they did it. They
6 shouldn't have done it. And that if he had been there and
7 they would have came to him, it wouldn't have happened
8 like that. It wouldn't have been so bad or whatnot, and
9 that he would have handled it.

10 Q. What was your understanding of that conversation?

11 A. That it would have -- I guess he would had it played
12 down so it wouldn't have seemed so big of a deal or
13 whatnot.

14 MR. CHRISTIAN: Thank you, Mr. McKenzie.

15 THE WITNESS: Yes, sir.

16 MR. JARRARD: May I recross, Your Honor?

17 THE COURT: On that one point?

18 MR. JARRARD: Yes, just what he just raised.

19 THE COURT: You may.

20 RECROSS EXAMINATION

21 BY MR. JARRARD:

22 Q. Mr. McKenzie, you said my client called and said it
23 was a civil matter, right?

24 A. Yes.

25 Q. Mr. Dean did, in fact, make a civil complaint,

1 didn't he?

2 A. Yes.

3 Q. And you know what happened in that civil complaint,
4 don't you?

5 MR. CHRISTIAN: Objection, Your Honor.

6 THE COURT: All right. Do you know?

7 THE WITNESS: No, sir.

8 THE COURT: He doesn't know.

9 MR. JARRARD: Okay.

10 BY MR. JARRARD:

11 Q. Do you know what the outcome of Mr. Dean's civil
12 complaint was, Mr. McKenzie?

13 MR. CHRISTIAN: Objection.

14 THE COURT: He just said no. Is that what you
15 said?

16 THE WITNESS: Yes, sir.

17 MR. JARRARD: Nothing further, Your Honor.

18 THE COURT: May he be excused?

19 MR. WOLFE: May I ask on the point that he made
20 with regard to Mr. Hinton?

21 THE COURT: Is this a new point? Oh, yeah. You
22 may ask about that.

23 RECROSS EXAMINATION

24 BY MR. WOLFE:

25 Q. You just testified that you understood what Mr.

1 Hinton had said to you to mean that if he had been there
2 things wouldn't have gone so bad. What exactly did he
3 say? What did you think he meant?

4 A. What I thought that he meant was if that he would
5 have been here that the situation wouldn't have been as
6 big as it was. As far as, I guess, how it was handled
7 after the fact.

8 Q. Well, that is your thought. What was it about what
9 he said that made you think that? He couldn't have cured
10 the contusion, could he?

11 A. No, sir.

12 Q. He couldn't have cured the fact that his eyes were
13 fixed and dilated, could he?

14 A. No, sir.

15 Q. He couldn't have cured the fact that there was an
16 FBI investigation, could he?

17 MR. CHRISTIAN: Objection, Your Honor. He has
18 not laid the foundation that there was an FBI
19 investigation at the time the conversation took place.

20 THE COURT: I don't think --

21 MR. WOLFE: Well, he got involved as a result
22 of the FBI investigation.

23 THE COURT: I think the timing may be a little
24 off.

25 MR. CHRISTIAN: Yes.

1 THE COURT: I think there's a point you're
2 making in there, but I think your timing is a little
3 off.

4 MR. CHRISTIAN: The timing is off, Your Honor.
5 Thank you.

6 THE COURT: Was the FBI involved at that
7 point?

8 MR. CHRISTIAN: No, Your Honor.

9 THE COURT: Yeah, I think that's the point.

10 MR. WOLFE: Okay.

11 BY MR. WOLFE:

12 Q. Could he have stopped the GBI investigation that
13 began on January the 5th of 2011?

14 A. I can't answer that. I don't know.

15 Q. Well, I'm asking you to speculate about that -- hang
16 on -- just like you speculated as to what you thought Mr.
17 Hinton meant?

18 MR. CHRISTIAN: It's -- objection, Your Honor.

19 THE COURT: Well, he testified to that without
20 objection. I don't know how on earth he can speculate as
21 to what the GBI was doing.

22 MR. CHRISTIAN: Much less in regard to Mr.
23 Hinton's powers to control the GBI.

24 THE COURT: I'll sustain that.

25 MR. WOLFE: Well that's -- well. When, in

1 fact, he testified, Judge, I think I did object and the
2 response by the government was that he's allowed to tell
3 what he was thinking at the time, meaning the witness.

4 MR. CHRISTIAN: It's his understanding of the
5 conversation, what the person speaking to him meant.

6 THE COURT: That's fine. But you're talking
7 about his speculating as to what the FBI was --

8 MR. WOLFE: Well, the FBI, the GBI, anybody.
9 BY MR. WOLFE:

10 Q. All right. So you can't speculate because you've
11 got no idea what other people were doing, correct?

12 A. Correct.

13 Q. And, in fact, you know that there's no way that Mr.
14 Hinton could have controlled anything as a result of the
15 injuries sustained by Mr. Dean, correct?

16 MR. CHRISTIAN: Objection, Your Honor.

17 THE COURT: I'll allow that question in view of
18 his testimony.

19 MR. CHRISTIAN: Control anything, Your Honor?

20 THE COURT: Well, yeah. I mean, if he could
21 control anything. I think that's opened up by his
22 testimony.

23 BY MR. WOLFE:

24 Q. Correct?

25 A. Repeat the question.

1 MR. WOLFE: Could the court reporter read back
2 the question?

3 MR. CHRISTIAN: If we could just get some
4 clarification on what anything means? We're talking about
5 Internal Affairs, GBI, FBI, healing powers of sick people
6 I --

7 MR. WOLFE: If Mr. McKenzie --

8 THE COURT: Ask your question again.

9 REPORTER: And, in fact, there's no way that Mr.
10 Hinton could have controlled anything as a result of the
11 injuries sustained by Mr. Dean, correct?

12 MR. WOLFE: Did you hear that?

13 THE WITNESS: No, sir, I didn't.

14 BY MR. WOLFE:

15 Q. And, in fact, there was no way that Mr. Hinton could
16 have controlled anything with regard to the injuries Mr.
17 Dean sustained, correct?

18 A. I don't know that.

19 Q. You don't know that?

20 A. No, sir.

21 Q. So you have limited speculative ability?

22 MR. CHRISTIAN: Objection, Your Honor.
23 Argumentative.

24 THE COURT: Yeah, I'll sustain that.

25 MR. CHRISTIAN: Thank you.

1 THE COURT: May this witness be excused?

2 MR. CHRISTIAN: Yes, Your Honor.

3 THE COURT: Mr. McKenzie, you are excused.

4 MR. HOGUE: Your Honor, could he just bring down
5 that grand jury transcript for us.

6 MR. JARRARD: I can grab it, Your Honor.

7 THE COURT: Thank you, Mr. McKenzie. You are
8 excused.

9 MR. CHRISTIAN: Your Honor, may we approach
10 briefly just to approach one matter. It should only take
11 a second.

12 THE COURT: Okay.

13 (BENCH CONFERENCE)

14 MR. CHRISTIAN: It's very clear Mr. Griffin is
15 seated with his back to the witness so to the extent that
16 these witnesses were going to identify Mr. Griffin, who he
17 is for the record, they will see the back of his head. So
18 I don't know how they're supposed to -- they have a view
19 of the back of his head the whole time.

20 THE COURT: Well, you know, if it's necessary I
21 guess we could say that all defendants look at the witness
22 or he could just turn around.

23 MR. CHRISTIAN: I would just ask that he turn
24 around so that the witness can actually see his face.

25 MR. PATE: If there's an issue --

1 MR. CHRISTIAN: Unless you want to stipulate to
2 ID.

3 MR. PATE: -- then say say can you identify him
4 and he can turn around. I don't think that's really
5 identification in court.

6 THE COURT: Well that's right, it's not.

7 MR. CHRISTIAN: That why I say we address it
8 now before the witness comes in. So if he's seated facing
9 the witness the witness has that opportunity to identify
10 him.

11 MR. PATE: Ninety-nine times that wouldn't be
12 an issue but this particular witness in the last two
13 interviews couldn't name my client and apparently was
14 confused about who he was. I don't know whether he's
15 going to identify him or not.

16 MR. CHRISTIAN: All the more reason to see his
17 face and make sure we're identifying the correct witness.

18 MR. PATE: Well, I don't know where else to put
19 him. We don't have any space.

20 THE COURT: He can turn his chair.

21 MR. PATE: I'm fine doing that.

22 MS. GOMEZ: Since we're here, Mr. Bolden, you
23 told us, is going to be next.

24 MR. CHRISTIAN: Yes.

25 MS. GOMEZ: There is a video of the escort that

1 Darren Douglass-Griffin and that Mr. Bolden is involved
2 in.

3 MR. CHRISTIAN: Are you talking about with
4 Franklin Jones?

5 MS. GOMEZ: Yes, Franklin Jones. It has nothing
6 to do with an assault or attack so we are allowed to play
7 that.

8 MR. CHRISTIAN: Yes.

9 MS. GOMEZ: I just wanted to make sure we cover
10 it now so that's no issue.

11 MR. CHRISTIAN: I mean, the one issue while
12 we're here, and this may be something worth discussion.
13 You know, there are portions of it that contain hearsay
14 statement and portions of it that contain statements by
15 Defendants so I'm not sure that the whole thing can be
16 played. I think certainly portions of it, but I'm not
17 sure that the whole thing can be played. If y'all are
18 putting in, for example --

19 THE COURT: How long is he going to be on the
20 stand?

21 MR. CHRISTIAN: Until we finish, I assume.

22 THE COURT: Enough time to look at the video.

23 MS. GOMEZ: We got it correct. I just wanted
24 to say since we're here. Thank you.

25 (BENCH CONFERENCE CONCLUDED)

1 THE COURT: Mr. Christian, you may call your
2 next witness.

3 MR. CHRISTIAN: Your Honor, the United States
4 calls Kerry Bolden.

5 COURTROOM DEPUTY: Do you solemnly swear the
6 testimony you are about to give in the case shall be the
7 truth, the whole truth and nothing but the truth, so help
8 you God?

9 THE WITNESS: I do.

10 COURTROOM CLERK: Will you please state and
11 spell your name for the record.

12 THE WITNESS: Kerry Elonzo Bolden. K-E-R-R-Y
13 E-L-O-N-Z-O B-O-L-D-E-N (spelling).

14 KERRY BOLDEN

15 Witness, having first been duly sworn, testified on

16 DIRECT EXAMINATION

17 BY MS. BOYD:

18 Q. Good afternoon, Mr. Bolden.

19 A. Good afternoon.

20 Q. Were you a member of the Correctional Emergency
21 Response Team at Macon State Prison from October 2010 to
22 December 2010?

23 A. Yes, ma'am.

24 Q. Is that team also called CERT or the CERT team?

25 A. Yes.

1 Q. Did you conspire or agree with members and
2 supervisors of the CERT team at Macon State to beat
3 inmates and cover it up afterwards?

4 MR. WOLFE: That's a legal conclusion, Judge. I
5 object. It's what the jury has been impaneled to decide.

6 MR. FOX: Your Honor, I would join that
7 objection.

8 THE COURT: Leading was the objection?

9 MR. WOLFE: Yes.

10 THE COURT: I sustained that objection.

11 BY MS. BOYD:

12 Q. Did you plead guilty in relation to your involvement
13 with beatings of inmates at Macon State?

14 A. Yes.

15 Q. Are you prepared to tell the jury about what you did
16 and what you saw other CERT officers do?

17 A. Yes.

18 Q. I want to ask you questions about your involvement
19 but first I'm going to ask you about your background.
20 Have you ever served in the military?

21 A. Yes, ma'am.

22 Q. What branches?

23 A. Marine Corps and the Army.

24 Q. For how long?

25 A. Twenty-four years.

1 Q. What was your starting rank?

2 A. Private.

3 Q. What was the final rank that you held?

4 A. E-7, Sergeant First Class.

5 Q. Where were you last stationed during your military
6 service?

7 A. Afghanistan.

8 Q. When was that?

9 A. 2008, 2009.

10 Q. Prior to your deployment in Afghanistan did you have
11 any other overseas deployments?

12 A. Yes, ma'am.

13 Q. Where were those?

14 A. Iraq. I did Iraq 2005 and 2006. I did Yugoslavia in
15 2002.

16 Q. You testified you were on CERT at Macon State
17 Prison. When did you start work at Macon State?

18 A. Around the time of 2007, August, 2007, if I'm
19 correct. August, 2007.

20 Q. What was your title or job rank when you started at
21 Macon State?

22 A. CO1.

23 Q. What were your duties as a CO1?

24 A. Security.

25 Q. Approximately when did you join the CERT team?

1 A. October of 2010.

2 Q. What is the primary duty of CERT at Macon State
3 Prison?

4 A. The primary duty is security and we also had
5 secondary duties, cell extractions, removal of unruly
6 inmates and supervise.

7 Q. When you say supervising is that supervising
8 inmates?

9 A. Supervising inmates, yes.

10 Q. What's a cell extraction, can you explain that to
11 the jury?

12 A. Yes. To remove violent inmates, a noncompliant
13 inmate. That's where the CERT actually goes in and
14 removes the inmate, the ones that are violent.

15 Q. Who was CERT's direct supervisor when you joined the
16 team?

17 A. Deputy Warden Hinton.

18 Q. Do you see the deputy warden here in court today?

19 A. Yes.

20 Q. Can you point him out and identify him by a piece of
21 clothing that he is wearing?

22 A. Yes. He has on a suit with glasses on sitting in
23 between two other officers.

24 Q. And can you see what color his shirt is?

25 A. I don't know what color it is.

1 Q. And you say he is sitting in between two officers.

2 How close is he to the edge of the row there?

3 A. He's the second guy in.

4 Q. Who is next in the CERT team's chain of command?

5 A. Sergeant Hall.

6 Q. And do you see Sergeant Hall present in here today?

7 A. Yes.

8 Q. Can you point him out and identify him by a piece of
9 clothing that he is wearing?

10 A. Yes. He has on a black suit with glasses on sitting
11 on the end of the first row.

12 MS. BOYD: And, Your Honor, I would like the
13 record to reflect that the witness has identified
14 Defendant Hinton and Defendant Hall.

15 THE COURT: The record will reflect that.

16 BY MS. BOYD:

17 Q. Now what was the command structure of the rest of
18 the CERT team? Was there any rank or identification for
19 the individual members of the team?

20 A. Yes, we had call signs. We had X-1 which would be
21 Officer Lach.

22 Q. And do you see X-1 or Officer Lach here today?

23 A. Yes.

24 Q. Can you point him out?

25 A. Yes.

1 Q. And identify him by a piece of clothing that he is
2 wearing?

3 A. He has on a light color shirt sitting on the end of
4 the first row on the far end.

5 Q. So you said he was X-1?

6 A. Yes.

7 Q. Who is next in the order?

8 A. X-2 or Officer Rushin.

9 Q. And do you see him here today?

10 A. Yes.

11 Q. Can you point him out and indicate who he is by an
12 article of clothing he's wearing?

13 A. Yes. He has on a light green shirt with glasses.
14 He's got a bald head and he is sitting the second guy in
15 from this end.

16 Q. And who is next in the order?

17 A. X-3, Officer Wimbush.

18 Q. Do you see Officer Wimbush here today?

19 A. Yes.

20 Q. Can you point him out and identify who he is by an
21 article of clothing?

22 A. Yes. He has on a white color shirt sitting in
23 between -- sitting right next to Officer Rushin.

24 Q. And who is next?

25 A. X-4, Officer Thomas.

1 Q. And who is after Officer Thomas?

2 A. Officer Douglass, he was X-5.

3 Q. Who was X-6?

4 A. Myself. I was X-6.

5 Q. Who was X-7?

6 A. That was Officer Griffin.

7 Q. Do you see him here today?

8 A. Yes.

9 Q. Can you point him out and identify him by a piece of
10 clothing that he is wearing?

11 A. Yes. He has on the black jacket with the blue
12 collar shirt sitting right there in the front.

13 Q. And who was X-8?

14 A. Officer Redden.

15 MS. BOYD: Your Honor, I would like the record
16 to reflect that Mr. Bolden has a identified Defendant
17 Lach, Defendant Rushin, Defendant Wimbush, and Defendant
18 Griffin.

19 THE COURT: The record will reflect that.

20 BY MS. BOYD:

21 Q. I would like to turn to CERT's function at Macon
22 State. Before you became a corrections officer what kind
23 of training did you receive to work at the prison?

24 A. I was trained in Forsyth at the Academy.

25 Q. Is that correctional officer training?

1 A. Yes.

2 Q. Now, you testified earlier that CERT was responsible
3 for cell extractions?

4 A. Yes.

5 Q. Was CERT called to a scene at the prison when an
6 inmate assaulted a guard?

7 A. Not all the time. But when that inmate got just --
8 I guess they couldn't get under control, the most violent
9 inmate, the most dangerous inmate, then CERT was called
10 out.

11 Q. How would CERT be called to the scene?

12 A. They would come over the radio and called for the
13 CERT sergeant and have him to bring his team to the
14 building.

15 Q. Was there a particular code that would be called to
16 signify when an inmate assaults an officer?

17 A. Yes, ma'am.

18 Q. What's that code called?

19 A. Code three.

20 Q. Now what was CERT's role at a scene when an inmate
21 assaulted a guard? When CERT is called to the scene what
22 was their role?

23 A. To get control of the inmate and remove him from the
24 building.

25 Q. Now under department policy how much force was CERT

1 allowed to use to get control of the inmate?

2 A. It would be determine -- like what type of
3 aggression the inmate was showing toward the officer.

4 Q. So the amount of force --

5 A. The least amount of force necessary to gain positive
6 control of the inmate.

7 Q. I'm sorry. I just spoke over you for a second. I'm
8 sorry. You said the least amount of force necessary to
9 gain positive control of the inmate?

10 A. Yes.

11 Q. Now once an inmate was under positive control were
12 you allowed to use any further force on that inmate?

13 A. No.

14 Q. Why can't you use force on an inmate once they are
15 already under control?

16 A. If he is in handcuffs he doesn't pose a threat.

17 Q. And after the inmate is restrained and the inmate
18 doesn't pose a threat to officers anymore what was CERT
19 supposed to do? Where were they supposed to take the
20 inmate?

21 A. To medical.

22 Q. Now during an inmate's escort to medical what is
23 CERT supposed to do to document that escort?

24 A. It's supposed to be recorded on camera.

25 Q. Why is CERT supposed to record the escort to medical

1 on camera?

2 A. For security of the inmate and also the officers.

3 Q. Now, why is CERT required to take the inmate to
4 medical?

5 A. He has to be checked by medical personnel to make
6 sure that he didn't sustain any injuries during the cell
7 extraction.

8 Q. Why is it important to make sure that the inmate
9 didn't sustain any injuries?

10 A. It would be for the benefit of the officer and the
11 inmate in case there was an un-justice done.

12 Q. Now, after you use force on an inmate what are you
13 required to do to document the force that you used?

14 A. You have to write a statement.

15 Q. And what about when you see someone use force on an
16 inmate, what are you supposed to do to document that?

17 A. You should write a statement and you should report
18 it.

19 Q. Why are you supposed to report that and write a
20 statement?

21 A. Because it's -- it's bad conduct for an officer.
22 It's not legal to hit an inmate and if you witness it you
23 should report it to your supervisor.

24 Q. So it's important for you to document when an
25 officer does something that is wrong or against their

1 training?

2 A. Yes.

3 Q. And if that's something that you see an officer do?

4 A. Yes.

5 Q. Now under prison policy are you allowed to leave

6 important details out of the reports when you see

7 something -- someone doing something to an inmate?

8 A. No.

9 Q. Now what about when you observe an inmate sustain an

10 injury, what responsibility do you have to document that

11 inmate's injury?

12 A. You have a use of force paperwork that has to be

13 filled out.

14 Q. So under department policy were you allowed to cover

15 up or hide whenever a use of force results in an injury to

16 an inmate?

17 A. No.

18 Q. Now, I want to turn your attention to conversations

19 that you had with CERT supervisors when you joined the

20 CERT team. Now, did you have a conversation with the

21 supervisor of CERT to learn how CERT worked when you first

22 started?

23 A. Yes.

24 Q. And can you remind the jury when was it that you

25 first joined the CERT team?

1 **A.** It was October of 2010.

2 **Q.** So when you started on CERT in October of 2010 what
3 did your supervisor Defendant Hinton tell you about how
4 CERT worked?

5 MR. WOLFE: Objection. There has been no
6 testimony that Defendant Hinton told him anything.

7 THE COURT: I guess you need to first ask if
8 Hinton told him anything.

9 BY MS. BOYD:

10 **Q.** When you first joined the CERT team, Mr. Bolden, did
11 you have any conversations with Defendant Hinton?

12 **A.** Yes.

13 **Q.** What did Defendant Hinton tell you about how CERT
14 worked?

15 **A.** He just said whatever happens on CERT stays on CERT.

16 **Q.** When Defendant Hinton told you whatever happens on
17 CERT stays on CERT was there anyone else present for that
18 conversation?

19 **A.** Yes.

20 **Q.** Who else was there?

21 **A.** Sergeant Hall.

22 **Q.** Where did that conversation take place?

23 **A.** In the deputy warden's office.

24 **Q.** And that's Deputy Warden Hinton?

25 **A.** Yes.

1 Q. Again what was Sergeant Hall's position in relation
2 to CERT?

3 A. He was the CERT supervisor.

4 Q. So what did Defendant Hall or how did Defendant Hall
5 react when Defendant Hinton said, things that happen on
6 CERT stay on CERT?

7 A. He didn't really react.

8 Q. Now, what did it mean to you at the time when
9 Defendant Hinton said to you, things that happen with CERT
10 stay with CERT?

11 A. I really didn't know what it meant. I just knew
12 that CERT had a very important role at the prison.

13 Q. Did you understand what Defendant Hinton wanted you
14 to keep secret?

15 A. No.

16 Q. Did you later learn what Defendant Hinton wanted you
17 to keep secret?

18 A. Yes.

19 Q. Okay. What was it that you understood Defendant
20 Hinton wanted you to keep secret?

21 MR. WOLFE: I'll object to speculation as to
22 what Hinton meant.

23 THE COURT: I think there needs to be more
24 foundation like how did he learn this.

25 MS. BOYD: Okay.

1 BY MS. BOYD:

2 Q. So you said you later learned what Defendant Hinton
3 meant when he said things that happen with CERT stay with
4 CERT?

5 A. Yes.

6 Q. How did you learn what he meant?

7 A. By the actions that were taken during some of the
8 working days when I was there. It's like stuff that
9 happens as far as like doing the cell extractions, the
10 actions that was taken on violent inmates after they
11 assault an officer.

12 Q. And what actions were taken on violent inmates after
13 they assaulted an officer?

14 MR. WOLFE: I'm going to object and move to
15 strike that as no foundation for what Deputy Warden Hinton
16 meant.

17 MS. BOYD: Your Honor, he is explaining how he
18 understood what Defendant Hinton meant.

19 THE COURT: Well, yes, I know that's a question
20 but is this because of something that Mr. Hinton
21 subsequently did? I mean, we have a conversation that
22 took place in October 2010 and at some point later he said
23 he came to have an understanding as to what Mr. Hinton
24 meant by that. Is that because of something that he
25 learned from Mr. Hinton or is it because of something he

1 learned from somebody else or something else?

2 MS. BOYD: Or practices that he saw taking place
3 at the prison. If I can follow up and ask him some
4 questions about what exactly he meant when he said he saw
5 actions taken against violent inmates at the prison by
6 CERT.

7 THE COURT: Well, I guess what I'm not quite
8 understanding is how the subsequent things that happened
9 that led him to have what he thought was an understanding
10 are related to Mr. Hinton.

11 MS. BOYD: Okay. Can I follow up about an
12 additional conversation with Mr. Hinton, Your Honor, and
13 then further lay the foundation?

14 THE COURT: Yes.

15 MS. BOYD: Okay.

16 BY MS. BOYD:

17 Q. Was there ever a time when you had a conversation
18 with Defendant Hinton when he asked you to use force on an
19 inmate when it wasn't necessary?

20 MR. WOLFE: I'm going to object to leading.

21 MS. BOYD: I'm trying to orient the witness,
22 Your Honor.

23 MR. WOLFE: The witness, if he needs
24 orientation, can share that.

25 THE COURT: Well, I'll allow that question.

1 I'll overrule the objection.

2 BY MS. BOYD:

3 Q. I'll ask you again, Mr. Bolden, did you ever have a
4 conversation with Defendant Hinton where he asked you to
5 use force on an inmate when it was not necessary in your
6 estimation?

7 A. I didn't hear you.

8 Q. Okay. Did you ever have a conversation with
9 Defendant Hinton where he asked you to use force on an
10 inmate where it was not necessary?

11 A. No.

12 Q. Did you ever have a conversation with Defendant
13 Hinton about an inmate in the G building who wouldn't get
14 out of the shower?

15 A. Yes.

16 Q. Can you tell the jury about that conversation?

17 A. Yes. It was during when the prison had a shutdown
18 and there was an inmate in the shower -- prisoner in the
19 shower. And at the time we was trying to get him out he
20 wouldn't come out. And once he finally got out of the
21 shower the inmate referred to me as a derogatory name.
22 And later on when we were telling Mr. Hinton about it and
23 he just made the comment that you should have got him,
24 don't never let them call you out a name. You should have
25 took care of him then.

1 Q. Did Mr. Hinton say anything else to you about what
2 you should have done to the inmate?

3 A. No.

4 Q. What did you understand him to mean when he said you
5 should have got him, you should have taken care of him?

6 MR. WOLFE: Same speculation we're trying to
7 establish a foundation for now, Judge. I object.

8 THE COURT: No, I think that's an appropriate
9 question. She's asking him -- the problem with the
10 earlier question was he said he didn't have an
11 understanding as to what Mr. Hinton meant when he made the
12 alleged statement. But later he came to have an
13 understanding and it was never clear to me how that
14 related to Mr. Hinton himself.

15 Now he is talking about a statement that Mr.
16 Hinton said to him in a particular context about a
17 particular thing and she is asking his immediate
18 impression after Mr. Hinton said that. Right?

19 MS. BOYD: That's correct.

20 BY MS. BOYD:

21 Q. So what did you understand Mr. Hinton to mean when
22 he said, you should have got that inmate?

23 A. I should have hit him.

24 Q. And based on your assessment was there any reason to
25 use force on that inmate?

1 **A.** No.

2 **Q.** So after you had that conversation with Mr. Hinton
3 about using force on an inmate that you didn't think it
4 was necessary to use force, on what did you think he meant
5 in the earlier conversation that you referred to?

6 MR. WOLFE: I'm going to object. There is
7 still no foundation. What happens on CERT stays on CERT
8 is the comment that we're talking about.

9 THE COURT: Right. I'm still not following. I
10 understand the significance or I think I understand the
11 significance of the second statement about, allegedly,
12 made about the inmate, but how does that relate to an
13 impression that he subsequently formed as to what Mr.
14 Hinton meant when he said, what happens on CERT stays on
15 CERT?

16 MS. BOYD: So, if I could now follow up and ask
17 Mr. Bolden when he understood what Defendant Hinton meant
18 that's what he was explaining before. So I think now there
19 has been further context provided for statements made by
20 Mr. Hinton and then what Mr. Bolden saw occurring what he
21 understood that to mean.

22 THE COURT: You can ask him when. I think
23 that's a question you need to ask. When?

24 MS. BOYD: Okay.

25 BY MS. BOYD:

1 Q. So, Mr. Bolden, when did you understand what
2 Defendant Hinton meant when he said, what happens with
3 CERT stays with CERT? When did you understand that?

4 MR. WOLFE: Excuse me. Object to the form of
5 the question. It's not when did he understand what Mr.
6 Hinton meant, it's when did he form his opinion, if she's
7 going to be able to ask as to what Mr. Hinton meant.

8 MS. BOYD: That's exactly --

9 THE COURT: That's an appropriate -- I mean,
10 it's a foundation question. She's first establishing when
11 he formed his understanding and the next they are going to
12 talk about how.

13 MR. WOLFE: That's why I objected to the form
14 of the question. It wasn't when did he develop his
15 understanding, it's when did you determine what Mr. Hinton
16 meant was what was asked and I don't think that's
17 appropriate.

18 THE COURT: I'll overrule that.

19 BY MS. BOYD:

20 Q. When did you understand what Mr. Hinton meant when
21 he said, what happens with CERT stays with CERT?

22 A. When we had the first incident with Franklin Jones.

23 MR. WOLFE: And I'll move to strike all the
24 other stuff that was attempted to be used as to establish
25 a foundation for understanding what he meant.

1 THE COURT: Well, it doesn't appear that the
2 extraction questions had anything to do with the
3 understanding of what happens on CERT stays on CERT. I'll
4 grant you that.

5 MR. WOLFE: So I'll move to strike.

6 MS. BOYD: But it is certainly a defendant's
7 statement, Your Honor, that is offered in furtherance of a
8 conspiracy.

9 THE COURT: Yeah, it can be --

10 MR. WOLFE: But he made the statement --

11 THE COURT: -- relevant for other reasons.

12 MR. WOLFE: He made the statement and the
13 statement is in and I'm not objecting to what Hinton said,
14 that's not my objection. I move to strike the other
15 testimony.

16 THE COURT: It's overruled.

17 BY MS. BOYD:

18 Q. So you said you understood what Defendant Hinton
19 meant when he said what happens with CERT stays with CERT
20 after the incident with Franklin Jones. Can you explain
21 how you knew what he meant based on that incident?

22 A. Just with the incident that happened and what took
23 place and then the cover-up.

24 MR. WOLFE: I object. There's no foundation
25 there for what he meant based on that answer.

1 THE COURT: Well, we don't know yet. Can you
2 relate, if you can, something Mr. Hinton said or did or
3 that was involved with to the subsequent understanding
4 about the meaning of Mr. Hinton's words.

5 MS. BOYD: Sir, the statement was, what happened
6 with CERT stays with CERT. And I believe Mr. Bolden is
7 going to testify to an incident that happened with CERT
8 and then what happened afterward subsequently to keep that
9 incident with CERT, providing context for the statement
10 that Defendant Hinton made to him when he joined the CERT
11 team.

12 THE COURT: Well, he has told us that he formed
13 his understanding after the incident with this inmate
14 Franklin Jones. He hasn't told us how.

15 MS. BOYD: Well, that's what I'm trying to get
16 to ask him.

17 THE COURT: What I want to see is how that
18 subsequent understanding is related to something that Mr.
19 Hinton said or did or was involved with.

20 MS. BOYD: So, Mr. Hinton makes the statement
21 when he joins CERT -- --

22 MR. WOLFE: If we're going to discuss these
23 things I don't want it to be in the presence of the
24 witness so that the witness's testimony is not affected.

25 THE COURT: Proceed. Understand what I'm

1 looking for though. I'm looking for a connection between
2 Mr. Hinton and his understanding of what he thinks Mr.
3 Hinton made, given he's told us initially that he didn't
4 have any understanding.

5 MS. BOYD: Right. So if I may inquire further?

6 THE COURT: You may.

7 BY MS. BOYD:

8 Q. So, what was it about the Franklin Jones incident
9 that led you to understand what Defendant Hinton meant to
10 you when he said things that happened with CERT stay with
11 CERT?

12 MR. WOLFE: I'm going to object to the form of
13 the question. It's not to understand to form his opinion
14 as to what Deputy Warden Hinton said.

15 MS. BOYD: I assumed that was the same thing,
16 Your Honor, understanding, forming his own opinion.

17 MR. WOLFE: They don't mean the same thing.
18 What he meant is not his opinion as to what he meant.

19 THE COURT: Rephrase the question in the form
20 of an opinion.

21 BY MS. BOYD:

22 Q. What was --

23 THE COURT: Eliciting his opinion.

24 MS. BOYD: I'm sorry.

25 THE COURT: Speak of it in terms of opinion

1 rather than understanding.

2 MS. BOYD: Okay.

3 BY MS. BOYD:

4 **Q.** What was your opinion of what Defendant Hinton meant
5 when he said, things that happen with CERT stayed with
6 CERT? How did the Franklin Jones incident contribute to
7 your opinion of what Defendant Hinton meant?

8 **A.** Because when everything was over and said with and
9 done with and the statement that was wrote and everything
10 had happened it was just like normal routine, like all the
11 instructions came from the supervisor.

12 MR. WOLFE: Objection, speculation as to where
13 the instruction came from unless he knows specifically and
14 personally.

15 THE COURT: Overruled. Move on. Go ahead.

16 BY MS. BOYD:

17 **Q.** And what was it that you said occurred with Inmate
18 Franklin Jones?

19 **A.** When he was beaten in the gym by the CERT team and
20 all the statements. And whenever it happened and when it
21 was over with the CERT Sergeant went to Deputy Warden
22 Hinton --

23 MR. WOLFE: I'm going to object to something
24 that may have happened that he's not privy to and nobody
25 told him about.

1 THE COURT: Overruled.

2 BY MS. BOYD:

3 Q. Continue.

4 A. He went to the Deputy Warden office -- he returned
5 from the Deputy Warden's office. We was in the CERT
6 office and he said, y'all need to make sure y'all have all
7 your stuff in order.

8 Q. And when you say make sure all your stuff was in
9 order, what did you understand him to mean?

10 A. Make sure all the statements related to each other
11 so it wouldn't be no --

12 Q. You said so it wouldn't be no -- So what wouldn't
13 it?

14 A. So it wouldn't be like something wrong was did.

15 Q. So just to make sure I'm understanding what you're
16 saying. You said that Inmate Franklin Jones was beaten in
17 the gym?

18 A. Yes.

19 Q. Afterwords was it your understanding that --

20 MR. WOLFE: Objection. You keep relying on
21 facts not in evidence. He never said Franklin Jones was
22 beaten in the gym.

23 THE COURT: Is the objection the gym wasn't
24 mentioned?

25 MR. WOLFE: No. That Jones was beaten in the

1 gym. It's not in evidence. He hasn't testified to that.

2 THE COURT: I thought he did.

3 MS. BOYD: That's what he just said, Your
4 Honor.

5 MR. WOLFE: Well he just--

6 THE COURT: He said it. You might can impeach
7 him.

8 MR. WOLFE: No, the question asked it, he
9 didn't say it. He said that they had beaten Inmate Jones
10 but they never said it was in the gym. The fact that it
11 was in the gym is not in evidence. The questions are
12 leading and she is adding information to the testimony.

13 THE COURT: The question might have been
14 leading. The jury will remember whether or not the word
15 gym got mentioned. Go ahead.

16 BY MS. BOYD:

17 Q. Mr. Bolden, was it your understanding that the
18 statements that you and other CERT members wrote after the
19 Franklin Jones beating were going to include the fact that
20 you and other CERT members had seen Franklin Jones being
21 beaten in the gym?

22 A. Say it again.

23 Q. Sure. Was it your understanding that the reports
24 that CERT wrote after the Franklin Jones beating, was it
25 your understanding that those reports were going to

1 include the beating of Franklin Jones?

2 A. Really, I don't understand the question. Are you
3 asking me were we supposed to put it in the statement that
4 we did?

5 Q. Yes?

6 A. No.

7 Q. And how did you know you weren't supposed to put
8 that in your statement?

9 A. Because no one mentioned it. It was never mentioned
10 in the statements.

11 Q. And you mentioned that this contributed to your
12 opinion of what Defendant Hinton had said to you. How did
13 that contribute to your opinion of what Defendant said to
14 you about things happening with CERT stay with CERT?

15 A. Because all of this happened in the CERT office. No
16 one was allowed in the CERT office but the CERT team.

17 Q. I want to turn your attention now to an inmate named
18 Terrance Dean. Were you ever called to respond to a
19 situation regarding Inmate Terrance Dean?

20 A. Yes.

21 Q. How were you called to respond?

22 A. Code three.

23 Q. What did that mean when a code three was called for
24 Terrance Dean?

25 A. That means that an inmate is assaulting an officer.

1 Q. And where was the code called for Terrance Dean?

2 A. In the E building.

3 Q. And what is the E building?

4 A. It's the dorm where the inmates were housed at.

5 Q. Did other CERT team members respond to the dorm as
6 well?

7 A. Yes.

8 Q. You said that a code three indicates that an inmate
9 had assaulted an officer?

10 A. Say that again.

11 Q. You said earlier that a code three means an inmate
12 has assaulted an officer?

13 A. Yes.

14 Q. When you got to the dorm that day was the
15 altercation between Dean and the officer already over?

16 A. Yes.

17 Q. Who had custody of Inmate Dean when you saw him in
18 the dorm?

19 A. Officer Rushin and Officer Thomas.

20 Q. Was he already handcuffed when you saw him that day?

21 A. Yes.

22 Q. Now, were you part of the escort of Dean away from
23 the dorm?

24 A. Yes.

25 Q. Now, aside from you and Officer Rushin and Officer

1 Thomas who were the other CERT members that escorted Dean
2 away from the dorm that day?

3 A. Officer Redden, Officer Douglass, Officer Wimbush
4 and Sergeant Hall.

5 Q. Now, as CERT escorted Dean away from the dorm did he
6 have any visible injuries that you saw?

7 A. No.

8 Q. Were there any visible injuries to his head?

9 A. No.

10 Q. To his face?

11 A. No.

12 Q. Was he able to walk out of the dorm on his own?

13 A. Yes.

14 Q. Now according to prison policy where was Dean
15 supposed to be taken after CERT took him from the dorm?

16 A. To medical.

17 Q. Where was Dean taken after he was taken from the
18 dorm?

19 A. To the gym.

20 Q. Now earlier you said that escorts of inmates from
21 the dorm to medical are supposed to be filmed. Did anyone
22 film Mr. Dean's escort from the dorm to the gym?

23 A. I don't know.

24 Q. Did you see anyone filming the escort?

25 A. No.

1 Q. Now to your knowledge was the gym a place at the
2 prison that was covered by cameras?

3 A. I don't know. I don't know.

4 Q. Was the gym a place where officers were assigned to
5 a post?

6 A. Yes, during recreation.

7 Q. Was there anyone assigned there at the time that you
8 took Terrance Dean there?

9 A. No.

10 Q. Now, why was Mr. Dean being taken to the gym that
11 day?

12 A. That's the way we just went. We went through the
13 gym. They said go through the gym and we go through the
14 gym.

15 Q. What did you understand was going to happen to Mr.
16 Dean when you got to the gym?

17 A. I understood once we got in the gym --

18 Q. And what did you understand?

19 A. That he was going to be beat.

20 Q. Why was Mr. Dean going to be beaten in the gym that
21 day?

22 A. Because he assaulted an officer.

23 Q. Now, what were you taught in the training academy
24 about beating inmates when there's no reason to beat
25 them?

1 **A.** It wasn't no excuse for it. It wasn't tolerated in
2 the Department of Justice, Department of Corrections, I
3 mean.

4 **Q.** Now when CERT took Dean into the gym was he still
5 handcuffed?

6 **A.** Yes.

7 **Q.** And when you got into the gym with the other CERT
8 officers can you describe who was with you?

9 **A.** Myself, Officer Douglass, Officer Redden, Officer
10 Rushin, Officer Wimbush and Sergeant Hall. Officer Thomas
11 was not with us.

12 **Q.** Now when you got into the gym did anyone say
13 anything?

14 **A.** Yes.

15 **Q.** What did they say?

16 **A.** We stopped and they said, "What are you waiting on?"

17 **Q.** Who said, "What are you waiting on?"

18 **A.** Officer Lach.

19 **Q.** So Officer Lach was also in the gym with you, with
20 Mr. Dean?

21 **A.** Yes. Yes.

22 **Q.** And when Officer Lach said, "What are you waiting
23 for?", how did the CERT team respond?

24 **A.** By hitting Inmate Dean.

25 **Q.** And at the time that CERT started hitting on Mr.

1 Dean was he still handcuffed?

2 A. Yes.

3 Q. Was he able to defend himself at all?

4 A. No.

5 Q. Based on your training and what you saw why was
6 force being used on Dean in the gym?

7 A. I really don't know.

8 Q. Was this the first time that you had been on an
9 escort where CERT had jumped on an inmate in the gym?

10 A. No.

11 Q. Now, you mentioned who was in the gym with you when
12 you -- when CERT started jumping on the inmate. Who of
13 those officers were also using force on the inmate?

14 A. I didn't hear the last part of that.

15 Q. Who of the officers that you named were using force
16 on the inmate or participating in the beating of the
17 inmate?

18 A. Every officer that was in there in the gym.

19 Q. Did you use force on Dean in the gym?

20 A. Yes, ma'am.

21 Q. What kind of force did you use when you first struck
22 or hit the inmate?

23 A. I struck him in the side with my elbow.

24 Q. And what happened after you struck him in the side
25 with your elbow?

1 **A.** The other officers were hitting him and I got hit
2 and I turned him loose.

3 **Q.** Now when you struck Mr. Dean in the side with your
4 elbow was he standing at that point?

5 **A.** Yes.

6 **Q.** And after you struck him with your elbow was he
7 still standing?

8 **A.** Yes.

9 **Q.** And what happened after that?

10 **A.** I released him.

11 **Q.** And when you released him what happened?

12 **A.** He fell to the floor.

13 **Q.** And after Mr. Dean fell to the floor did you use
14 force on him?

15 **A.** Yes.

16 **Q.** What did you do?

17 **A.** I walked up to him and I slapped him in the face
18 about three or four times screaming at him.

19 **Q.** What were you screaming at Mr. Dean?

20 **A.** Get up. Get your ass up and stop playing, get up.

21 **Q.** Did Mr. Dean ever get up?

22 **A.** No.

23 **Q.** Now previously when you met and spoke with us did
24 you admit that you had struck Dean while he was standing
25 but denied hitting him when he was on the ground?

1 A. Yes, I denied it.

2 Q. And previously did you say that it was chaos and you
3 couldn't say what happened to Dean when he was on the
4 ground?

5 A. Yes.

6 Q. When was it that you first admitted to us that you
7 used force on Dean when he was on the ground?

8 A. It was yesterday morning.

9 Q. And why did you admit that you hit Dean when he was
10 on the ground yesterday morning?

11 A. Because I felt like it was just time for it to be
12 over with, you know. I'm just ready for it to be over
13 with. I've got a family and I'm tired.

14 Q. Did you have any conversations with anyone before
15 you came in and told us that?

16 A. No.

17 Q. Was there anyone that helped you come to that
18 decision --

19 A. Yes.

20 Q. -- to tell us that you had struck him on the ground?

21 A. Yes.

22 Q. Who was it that helped you come to that decision?

23 A. My sister-in-law.

24 Q. Now when did CERT stop using force on Dean in the
25 gym?

1 A. It was stopped when I -- after I got done slapping
2 him they was done.

3 Q. Now before the use of force stopped in the gym can
4 you name the officers that you saw using force on Dean?

5 A. I really don't know what exactly the officers did as
6 far as striking him. I just know everyone was involved in
7 the beating.

8 Q. Okay. And when you say everyone was involved in the
9 beating --

10 A. The CERT members.

11 Q. Okay. And which specific CERT members was that?

12 A. Myself, Redden, Douglass, Rushin, Lach, Sergeant
13 Hall and Wimbush.

14 Q. And you said earlier Mr. Dean didn't have any
15 visible injuries when he went into the gym?

16 A. Not that I recall, no.

17 Q. What, if any, injuries did he have when the beating
18 stopped?

19 A. After the beating stopped I really couldn't tell.

20 Q. Was there a time that you saw that Mr. Dean was
21 injured after CERT's use of force?

22 A. Yes.

23 Q. What injury did you see on Mr. Dean?

24 A. After we began to pick him up he had a small knot on
25 his head.

1 Q. Could Mr. Dean walk on his own out of the gym?

2 A. No.

3 Q. Based on the fact that he wasn't able to walk on his
4 own what did you think about the severity of his injuries
5 after the beating?

6 A. I thought it was pretty bad.

7 Q. What did Defendant Hall, Defendant Lach, Defendant
8 Rushin and Defendant Wimbush do after the beating?

9 A. They exited the gym and they said they was going
10 back to the building.

11 Q. Why did they leave the gym after the beating?

12 A. Ma'am?

13 Q. Why did they leave the gym after the beating?

14 A. Why did they leave?

15 Q. Yes.

16 A. I really don't know.

17 Q. What were you told to do after the beating?

18 A. To take him to medical.

19 Q. Who told you to take Dean to medical?

20 A. Sergeant Hall.

21 Q. Did anyone help you take him to medical?

22 A. Yes.

23 Q. Who was that that helped you take Dean to medical?

24 A. Officer Douglass and Officer Redden.

25 Q. Now, did you ever see Dean walking or talking again

1 after you carried him out of the gym?

2 A. No.

3 Q. Now, once you got into medical did any of those
4 other CERT officers who left the gym and went back to the
5 building ever come back to medical?

6 A. Yes.

7 Q. And did anyone from the CERT team comment on Dean's
8 condition in medical?

9 A. No, not that I remember, no.

10 Q. Did Defendant Hall make any comments in medical
11 about Dean?

12 A. Not about Dean, no.

13 Q. Did Defendant Hall make any comments at all in
14 medical that day that you recall?

15 A. Yes.

16 Q. What did he say?

17 A. He said, "We're going to lose our jobs over this
18 one."

19 Q. And did you, in fact, lose your job after the Dean
20 beating?

21 A. Yes.

22 Q. Have you plead guilty in association with your
23 involvement in the beating of Dean and other inmates?

24 A. Yes, ma'am.

25 Q. What did you plead guilty to?

1 A. I plead guilty to the beating of an inmate and
2 making false reports.

3 Q. And are those felonies or misdemeanors?

4 A. Felonies.

5 Q. Have you been sentenced yet?

6 A. No.

7 Q. Do you know what sentence you're going to get?

8 A. No, ma'am.

9 Q. Are you hoping for a lesser sentence because of your
10 cooperation in this case?

11 A. Yes.

12 Q. Has anyone promised you what sentence you're going
13 to get?

14 A. No.

15 Q. Has anyone promised you that you're, in fact, going
16 to get a lesser sentence?

17 A. No.

18 Q. What's your understanding about who will make the
19 decision about what your sentence is?

20 A. The judge.

21 Q. When Dean was taken to medical after the beating was
22 the prison staff able to fully address all of his
23 injuries?

24 A. No.

25 Q. Where was Dean taken?

1 A. He was taken to an outside facility.

2 Q. Earlier you said that your supervisor said that you
3 guys are going to lose your jobs about what happened to
4 Dean. What did you or did you and other CERT members do
5 to take steps to try to stay out of trouble?

6 A. Wrote false reports.

7 Q. You wrote a false report about Dean you said. When
8 did you write your report?

9 A. After I returned back from the outside medical
10 facility.

11 Q. Where did you write your report?

12 A. In the CERT office.

13 Q. Was there anyone else present when you wrote your
14 report?

15 A. Yes.

16 Q. Who else was present?

17 A. Sergeant Hall, Officer Douglass, Officer Rushin
18 Officer Wimbush, Officer Lach and Officer Thomas.

19 Q. What did your supervisor, Defendant Hall, say to you
20 about your written statement?

21 A. He said get with these other guys and see what they
22 wrote on their statement so you can make your statement
23 match theirs.

24 Q. And what did you think Defendant Hall meant when he
25 said make your statement match theirs?

1 A. Just make it where seem like nothing out of the
2 ordinary happened. It was like -- just make it where it
3 will go through and nothing will be said about it like no
4 un-justice was done.

5 Q. So did your statement include anything about the
6 beating of Dean in the gym?

7 A. No.

8 Q. Was it your understanding that the other statements
9 were going include anything about Dean in the gym?

10 A. No.

11 MS. BOYD: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 BY MS. BOYD:

15 Q. I handed you what's been marked for identification
16 as Government's Exhibit 8. Can you tell us what that is?

17 A. It's a witness statement.

18 Q. And is that your witness statement from the incident
19 with Terrance Dean?

20 A. Yes, ma'am.

21 Q. How do you know that that's your statement?

22 A. My signature.

23 MS. BOYD: And, Your Honor, the government
24 offers Government Exhibit 8 into evidence.

25 THE COURT: Any objection?

1 MR. WOLFE: No objection.

2 MR. FOX: No objection.

3 THE COURT: Hearing none it is admitted without
4 objection.

5 MS. BOYD: May I publish it to the jury, Your
6 Honor?

7 THE COURT: You may.

8 BY MS. BOYD:

9 Q. What's the date of the incident.

10 A. 12-16-2010.

11 Q. Can you please read your statement to the jury?

12 A. Yes. "I, Officer Bolden, met Officer Douglass and
13 Officer Redden on the west side walk where Inmate Dean
14 Tanner, number 1194267 appeared to be passed out. I,
15 Officer Bolden, assisted by carrying the legs of the
16 inmate to get him to medical."

17 Q. So your statement did not include anything about the
18 force that you used on Dean in the gym?

19 A. No.

20 Q. Is that right?

21 A. No.

22 Q. Why not?

23 A. Because we was instructed for our statement to match
24 the other CERT members statement so it wouldn't show no
25 signs that we beat the inmate.

1 Q. Did any of the other CERT members statements that
2 you looked at include the fact that you and other CERT
3 members had used force on Dean in the gym?

4 A. No.

5 Q. Was anyone else with you when Defendant Hall told
6 you to make your statement match?

7 MR. WOLFE: Judge, I'm going to object. I guess
8 it would be hearsay as to what was in the other witness
9 statements. The best evidence would be the statements
10 themselves.

11 THE COURT: Are those statements going to be
12 tendered?

13 MS. BOYD: Yes, Your Honor.

14 THE COURT: I'll overrule the objection.

15 BY MS. BOYD:

16 Q. Was there anyone else with you when Defendant Hall
17 told you to make your statement match?

18 A. Yes.

19 Q. Who was with you?

20 A. Officer Douglass.

21 Q. How did Officer Douglass respond when Defendant Hall
22 told him to make the statement match?

23 A. He was kind of hesitant because he was saying that
24 if we write this statement like this it's going to make it
25 seem like that we're not the only someone that had

1 anything to do with it. And he didn't want to write it.

2 Q. And how did Defendant Hall respond when Officer
3 Douglass didn't want to write his statement that way?

4 A. The comment was made, "Just write the statement."

5 Q. And when you wrote your statement who did you give
6 it to?

7 A. Sergeant Hall.

8 Q. And did Sergeant Hall review your statement?

9 A. Yes.

10 Q. Did Sergeant Hall ever give you your statement back
11 and tell you to put something in the statement about the
12 beating of Dean in the gym?

13 A. No.

14 Q. And was it your understanding that Sergeant Hall was
15 present for that beating?

16 A. Yes.

17 Q. And participated in that beating?

18 A. Yes.

19 Q. Now when an inmate is injured what part of the
20 Department of Correction investigates those injuries?

21 A. I really don't know.

22 Q. Is there a part of the Department of Corrections
23 that investigates inmate interviews?

24 A. Internal Affairs.

25 Q. Now, what directions did you get from supervisors or

1 other members of CERT about what to tell investigators
2 about how Dean was injured?

3 MR. WOLFE: Object to the form of the question
4 with regard to that generalization if he was given
5 information. It shouldn't be general like that.

6 THE COURT: Make it specific.

7 MS. BOYD: Okay.

8 BY MS. BOYD:

9 Q. What direction did you receive about what to tell
10 investigators about how Dean got his injuries?

11 A. Stick to the story.

12 THE COURT: And from whom?

13 BY MS. BOYD:

14 Q. Who told you that?

15 A. Sergeant Hall.

16 Q. Did anyone else tell you to do that?

17 A. No.

18 Q. Now what did it mean to you when Sergeant Hall said,
19 "Stick to your story when you talk to investigators."

20 A. Stick to what you wrote on the statement.

21 Q. And is what you wrote on your statement accurate?

22 A. No.

23 Q. About what happened to Terrance Dean? Was your
24 statement accurate about what happened to Terrance Dean?

25 A. No.

1 Q. Were you interviewed by the Georgia Bureau of
2 Investigation?

3 A. Yes.

4 Q. When you met with the Georgia Bureau of
5 Investigation did you initially tell them how Dean got his
6 injuries?

7 A. Yes.

8 Q. What did you tell them?

9 A. I told them force was used on him.

10 Q. But when you first met with them did you initially
11 tell her about the force that CERT used on Inmate Dean?

12 A. No.

13 Q. Why not?

14 A. I stuck to the story.

15 Q. Now, in addition to the interview did you also give
16 GBI a handwritten statement?

17 A. Yes.

18 Q. And in your handwritten statement did you also stick
19 to the story?

20 A. No. I can't remember the statement.

21 MS. BOYD: If I could have the Court's
22 indulgence for a moment, Your Honor.

23 THE COURT: Sure. Let me ask a question while
24 you're doing that. The statement that is on the screen,
25 Exhibit 8, west side walk. Where is that in relation to

1 the gym?

2 THE WITNESS: The west side, you've got an east
3 and a west side in the prison. The west side is coming
4 from the west side dormitories, where all the dormitories
5 are located on the west side.

6 THE COURT: And where is the dormitory that Mr.
7 Dean was in?

8 THE WITNESS: The east side, the E building.

9 THE COURT: Thank you.

10 MS. BOYD: I'm going to mark this, Your Honor,
11 as Government Exhibit 119. May I approach, Your Honor?

12 THE COURT: You may. Does defense counsel know
13 what you're talking about?

14 MS. BOYD: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MS. BOYD:

17 Q. Mr. Bolden, I just handed you what's been marked as
18 Government's Exhibit 119 for identification purposes.
19 What is that?

20 A. It's a statement that I wrote to the GBI officer.

21 Q. And in your statement that you wrote to the GBI were
22 you truthful about how Dean got his injuries in that
23 statement?

24 A. No.

25 Q. Now, why did you provide the GBI with false

1 information about how Dean got his injuries?

2 A. Because after that that's what she wanted to hear.

3 Q. Now, Mr. Bolden, you testified earlier that Mr. Dean
4 was not the first inmate who assaulted an officer to be
5 taken to the gym; is that correct?

6 A. Yes.

7 Q. What was the first incident where you saw CERT use
8 force on an inmate to punish them for having assaulted an
9 officer?

10 A. Inmate Franklin Jones.

11 Q. Did you respond to a code three for inmate Franklin
12 Jones?

13 A. Yes.

14 Q. Where was that code for?

15 A. That was in F building, on the east side of F
16 building.

17 Q. And what is F Building at Macon State?

18 A. It's the dorm.

19 Q. What was the name of the officer who had been
20 assaulted?

21 A. Officer Davis.

22 Q. When you got to the scene of F building where was
23 Inmate Jones?

24 A. Inmate Jones was outside on the ground.

25 Q. And when you saw Inmate Jones outside of the dorm

1 and on the ground did he have any visible injuries?

2 A. I don't remember.

3 Q. Did you see any blood on Inmate Jones when you saw
4 him outside of the dorm?

5 A. Yes.

6 Q. Did he have any indivisible injuries to his face
7 that you saw?

8 A. No.

9 Q. Did he have any visible injuries to his head that
10 you saw?

11 A. No, not that I can recall.

12 Q. Were you part of Inmate Jones escort away from the
13 dorm?

14 A. Yes.

15 Q. Where did CERT take Jones once they left the dorm?

16 A. To the gym.

17 Q. Did you see anyone film the escort of Jones from the
18 dorm to the gym?

19 A. I don't remember that part.

20 Q. Was there anyone that you saw filming?

21 A. No. Not that I remember, no.

22 Q. When CERT got to the gym with Jones did anyone say
23 anything?

24 A. No.

25 Q. Did anyone do anything when CERT got to the gym with

1 Jones?

2 A. Yes.

3 Q. What did they do?

4 A. The CERT team started beating him.

5 Q. Now was Jones still handcuffed when he was taken
6 into the gym?

7 A. Yes.

8 Q. Was he handcuffed when CERT started beating him?

9 A. Yes.

10 Q. What was your reaction when CERT started beating
11 Jones in the gym?

12 A. I really didn't have a reaction. It just happened
13 and I didn't really have no reaction.

14 Q. Did you use any force on Jones in the gym that day?

15 A. No.

16 Q. Why not?

17 A. It happened so fast. I really didn't know what was
18 going on at first and it was over with.

19 Q. Based on what you saw was there any justified reason
20 for using force on Jones in the gym that day?

21 A. No.

22 Q. Based on what you saw why was CERT using force on
23 Jones in the gym?

24 A. There was no reason.

25 Q. Who was in the gym when CERT was using force on

1 Jones?

2 A. Myself, Officer Douglass, Officer Thomas, Officer
3 Wimbush, Officer Lach and Officer Rushin and Sergeant
4 Hall.

5 Q. Who did you see use force on Jones in the gym?

6 A. Everyone. All the members of the CERT team.

7 Q. Did you see anyone filming CERT using force on Jones
8 in the gym?

9 A. No.

10 MS. BOYD: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MS. BOYD:

13 Q. Mr. Bolden, I've handed you what's been marked as
14 Government Exhibit 120 for identification purposes. Do
15 you know what that is?

16 A. Yes.

17 Q. What is that?

18 A. It's the staffing assignment.

19 Q. What's the date of that staffing assignment?

20 A. October 25th, 2010.

21 Q. And whose listed on the staffing assignment for CERT
22 on Government 120?

23 A. Sergeant Hall, Ronald Lach, Delton Rushin, Derrick
24 Wimbush, Kadarius Thomas, Darren Douglass, Kerry Bolden
25 and Tyler Griffin.

1 Q. You mentioned that Tyler Griffin was listed on duty
2 that day?

3 A. Yes.

4 Q. Did he respond to the code three for Franklin Jones?

5 A. Yes.

6 Q. Was he part of the escort for Franklin Jones?

7 A. Yes.

8 Q. And when you got to the gym with Franklin Jones was
9 Tyler Griffin present?

10 A. Yes.

11 Q. What did you see Tyler Griffin do in the gym?

12 A. I don't remember what he did but all the CERT
13 members that were in the gym used force on the inmate.

14 Q. And when you say you don't remember what Tyler
15 Griffin did, are you certain that you saw him in the dorm?
16 I mean in the gym, I'm sorry.

17 A. Yes, we was all in the gym.

18 Q. Now, after CERT used force on Jones in the gym where
19 was he taken?

20 A. To medical.

21 Q. And were you part of the escort to the medical unit?

22 A. Yes, ma'am.

23 MS. BOYD: I'm going to ask Connie to pull up
24 Government Exhibit 10A. Is it possible to pull that up
25 just for the witness, Your Honor, to identify.

1 THE COURT: Is this on the Jones incident?

2 MS. BOYD: Yes. 10A is the composite.

3 BY MS. BOYD:

4 Q. Mr. Bolden, Government Exhibit 10A, what does that
5 image depict there?

6 A. The inmate being escorted to medical by two CERT
7 officers.

8 Q. And does that video fairly and accurately portray
9 the escort of the inmate into medical by the two CERT
10 officers?

11 A. Yes.

12 MS. BOYD: Your Honor, if I could ask to enter
13 that into evidence and publish it for the jury.

14 THE COURT: You mean the still one?

15 MS. BOYD: No. I was actually going to play it
16 and have him narrate.

17 THE COURT: Any objection?

18 MR. PATE: Your Honor, at this point I'm not
19 sure if we're going to play the entire video that was
20 produced in discovery or just some excerpt of it.

21 MS. BOYD: This is a clip from this portion.
22 The clip that is listed as Government Exhibit 10A.

23 MR. PATE: Okay. So we're not tendering the
24 entire video into evidence?

25 MS. BOYD: That's right.

1 MR. PATE: You're tendering part of the exhibit?

2 MS. BOYD: That's right.

3 MR. PATE: Judge, I think we ought to have the
4 entire video in evidence, whether they want to play it or
5 not.

6 THE COURT: Well, we might. But is there any
7 objection to this clip? I understand you may contend
8 completeness.

9 MR. PATE: Only on that basis. I may want to
10 introduce the entire video.

11 THE COURT: Okay. And I will admit this clip
12 without objection; is that correct?

13 MR. WOLFE: Yes, sir. Should we all say when
14 we join, Judge?

15 THE COURT: No. On that I understand. The
16 Defendants may contend that -- you're not included in
17 contending that other parts of this video may be necessary
18 as well. You may proceed.

19 MS. BOYD: Okay. So is it okay to show it to
20 the jury now, Your Honor, then?

21 THE COURT: Yes.

22 BY MS. BOYD:

23 Q. Mr. Bolden, I'm going to ask you to watch the video
24 and I'm going to ask you some questions about it
25 afterward. Okay.

1 (VIDEO PLAYING AT THIS TIME)

2 BY MS. BOYD:

3 Q. Now, were you part of that escort that you just
4 watched?

5 A. Yes.

6 MS. BOYD: Connie, can you pull it back up and
7 pause it.

8 (VIDEO PLAYING AT THIS TIME)

9 BY MS. BOYD:

10 Q. Where are you?

11 A. On the left.

12 Q. And if you touch your screen there you can circle
13 where you are?

14 A. (Witness complies).

15 Q. Okay. That's you?

16 A. Yes.

17 Q. And who is the other officer with you?

18 A. That's Officer Douglass.

19 Q. And who is the inmate there in the middle?

20 A. At this point I can't tell.

21 MS. BOYD: Connie, can you continue playing the
22 video.

23 (VIDEO PLAYING AT THIS TIME)

24 BY MS. BOYD:

25 Q. Who was the officer that was walking ahead of you?

1 **A.** Here Sergeant Hall, CERT sergeant.

2 **Q.** And where are you going at that point?

3 **A.** To medical.

4 MS. BOYD: Your Honor, if I may ask Connie to
5 pull up Government's Exhibit 10B.

6 THE COURT: Does this still concern this?

7 MS. BOYD: Yes, it's another clip from the --

8 THE COURT: The only reason I'm asking is we're
9 right at 2:00 o'clock. Do you have much more you're going
10 to do with this particular subject?

11 MS. BOYD: Yes, Your Honor. So maybe now is a
12 good time to stop.

13 THE COURT: Okay. Let's stop for the day. I
14 promised you, ladies and gentlemen, that we would have you
15 out of here by 2:00 o'clock. It's 2:01 by my watch.

16 In just a minute I will let you go to the jury
17 room to gather your things and Ms. Hatcher will check on
18 you just to make sure everything is okay. We will see you
19 in the morning shortly before 8:00 o'clock. We will keep
20 to the same schedule if at all possible.

21 Remember my instructions of how important it is
22 that you not allow yourselves to be exposed to any
23 information whatsoever about this case. Again, everything
24 that you need to know to make an informed decision about
25 the case will be presented to you here in the jury room.

1 So don't do your own research and don't allow
2 anybody to try and talk with you about the case. We will
3 see you in the morning.

4 (JURORS EXIT COURTROOM)

5 THE COURT: Mr. Bolden, you can step down. You
6 can wait outside. As far as the Court is concerned you
7 are excused until in the morning.

8 One observation, I don't know that it changes
9 anything we're doing at the moment. Having watched the
10 video that Mr. Jarrard was using during his cross
11 examination, I don't know why that's not admissible. I
12 think there is information on the video that -- although
13 the witness testified to it, that it's still evidence of
14 certain events that the defense, at least Mr. Jarrard,
15 thinks is important. But just as importantly, I didn't
16 see anything on there that was prejudicial, unfairly
17 prejudicial to anybody. On the contrary I think there's a
18 risk the jury is going to assume there's something on
19 there that is not on there.

20 So, if it's not being tendered at this time I'm
21 sure we will return to the subject as the Defendants puts
22 up their case or maybe with some prosecution witnesses.
23 But that's my thoughts.

24 And as I said at the beginning of the trial,
25 with regard to the incidents that form the subject matter

1 of the indictment, I don't see how we can try it in quite
2 the vacuum that the government is suggesting that we
3 should.

4 MR. CHRISTIAN: Can I just respond to that
5 briefly, Your Honor?

6 THE COURT: You may.

7 MR. CHRISTIAN: To clarify, I certainly
8 understand there are circumstances, particularly parts of
9 the video for the Dean incident that are relevant and may
10 become relevant over the course of the trial. I don't
11 deny that at all.

12 I think the same could probably be said for the
13 Mario Westbrook incident. There are components of that
14 video from the dorm that could be relevant.

15 There could be components of, you know, witness
16 testimony from what happened in those two incidents.

17 For Franklin Jones where he blind-sided Officer
18 Davis, there was no force used on Jones in the dorm. The
19 video of the officer just screaming in the background I
20 don't see how that's relevant and it's highly inflammatory
21 in contrast to the Dean video.

22 THE COURT: Well, that may be. I'm just
23 commenting about the video I saw from the Terrance Dean
24 incident.

25 MR. CHRISTIAN: I still -- I guess my objection

1 to it at the time, with regard to Mr. McKenzie, was the
2 relevance of it with respect to Mr. McKenzie. I certainly
3 concede it could be relevant with a subsequent witness,
4 but I don't think it was particularly relevant with Mr.
5 McKenzie when he came so late to the game.

6 THE COURT: Well, but I think the defense was
7 able to legitimately use information on the video to get
8 testimony from Mr. McKenzie, that although he wasn't
9 there, he was able to corroborate and explain events. And
10 I think that was an appropriate purpose for use of the
11 video. I understand your objection.

12 MR. CHRISTIAN: Okay.

13 THE COURT: I'm just saying I hadn't seen it
14 now. That particular video, nothing in it concerns me,
15 implicates the objections that the government has raised
16 generally about unrelated prison conditions.

17 MR. CHRISTIAN: For that particular video for
18 Dean?

19 THE COURT: Yes. That's all I'm talking about.

20 MR. CHRISTIAN: Okay.

21 MR. JARRARD: There's a housekeeping matter I
22 have or I will provide to the Court that will help. The
23 same issue is going to come up on the Westbrook videos. I
24 have a copy of those. I can either give you my copy now
25 or I can provide you a duplicate copy in the morning if

1 the Court wants to see it outside --

2 THE COURT: Well, I think that's probably the
3 most expeditious way to proceed. Ms. Gomez mentioned
4 another video that might come up with Mr. Bolden.

5 MS. GOMEZ: Your Honor, it's the Franklin Jones
6 escort video. That's what we labeled it and they started
7 to show portions of it. Extremely important to our
8 defense because -- some of our contentions is it's very
9 important as to when Mr. Lach enters. I know that they
10 have a concern about the audio, some statements being
11 made. What I did was I have a -- if I may approach,
12 Judge?

13 MR. JARRARD: And Your Honor, do you want the CD
14 of the Westbrook/Hinton?

15 THE COURT: Yeah, that's the easiest --

16 MR. JARRARD: I mean, if there's any question
17 on that -- just let the government get it.

18 MR. CHRISTIAN: Have we gotten a copy of that?
19 Okay. If we could get a copy if they're going to give it
20 to the Court.

21 THE COURT: We'll get copies made.

22 MR. PATE: And, Your Honor, I don't know at
23 this point if you're considering the admissibility of the
24 Jones clip but we have a different basis for its
25 admissibility as well, and I just want to be heard on

1 that. Again, it's the video that Tyler actually took and
2 that's why.

3 MS. GOMEZ: And, Your Honor, what I'll do is I
4 will e-mail to Ms. Hatcher the video of Franklin Jones's
5 video. And here what I did, I'm going to show -- I've
6 showed the government already -- it's a synopsis of what
7 we did by a breakdown. Because the player -- the numbers
8 were off at the bottom so we had to put it on another
9 player in order to follow this. And this is something
10 that I was going to use during the questioning.

11 MR. CHRISTIAN: And, Your Honor, if we could
12 just get a copy of that because we haven't gotten a copy
13 of it. And not to make this more confusing to the Court
14 than is absolutely necessary, the government's issue with
15 the Jones video, which is relevant to the piece of paper
16 you're holding in your hand right there, is that unlike
17 the other videos, or most of the other videos, it actually
18 has audio. So there are many different Defendants making
19 statements, there are unindicted co-conspirators making
20 statements, Franklin Jones makes statements. He says at
21 one point the reason I'm hurting is because these guys are
22 beating me.

23 All those hearsay problems that make introducing
24 the entire video problematic. So that's just an issue for
25 the Court.

1 THE COURT: And Ms. Gomez, you contend that the
2 audio is admissible as well?

3 MS. GOMEZ: Your Honor --

4 THE COURT: And others may as well.

5 MS. GOMEZ: Your Honor, I contend that there
6 are certain portions. No, I'm fine if they want to play
7 the video completely sound free because what's important
8 to us is when my client enters. But I did pull out some
9 of the audio to that to show you what's in there. Because
10 I didn't know if you wanted to look at the whole thing.

11 THE COURT: Okay.

12 MS. GOMEZ: Because that wasn't intended to be
13 an exhibit to be introduced to the jury. That was
14 something to help me along as I went through the video.
15 That's why I didn't give it to the government.

16 MR. CHRISTIAN: And, Your Honor, in terms of
17 the clips that we want to play, there are clips where we
18 want to play where the Defendants make statements.
19 Whereas we raised in our previous motion, the government
20 can introduce the Defendants statements, but the
21 Defendants can't introduce their own statements.

22 So there are limited portions we intend to play
23 with audio, but other portions raise hearsay concerns.

24 THE COURT: So the government has prepared
25 clips from the Jones escort video which includes audio and

1 it's being offered as admissions by the Defendants?

2 MR. CHRISTIAN: Correct, Your Honor.

3 THE COURT: And Ms. Gomez, did I hear that
4 you're primarily interested in the video as opposed to the
5 audio, which you wouldn't mind the audio?

6 MS. GOMEZ: I'm fine with all of it Judge, but
7 I understand the hearsay objections. What's more
8 important to me is the timing of when my client enters,
9 but you have to look at it for quite some time. And I'm
10 going to say back to the Court's vacuum concern, I mean, I
11 can't speak for all the Defendants here, but from our
12 standpoint, the Lach standpoint, we would have no
13 objection holding the clip.

14 THE COURT: What's the basis for the admission
15 of statements that are not admissions or admissible
16 pursuant to some other rule?

17 MR. PATE: Judge, on behalf of Mr. Griffin,
18 we've also tendered that video and a clip of the video. I
19 don't care about the audio. I don't care about most of
20 the video. I care about maybe the first three or four
21 minutes of the video with no audio. That's just our
22 position on the record.

23 THE COURT: And how are you -- are you going to
24 use the clip on cross examination?

25 MR. PATE: It's this very clip that this

1 witness has testified to. It does not matter for our
2 purposes. The reason we would be introducing the video is
3 because -- and whether it can come in through this witness
4 through cross or another witness, that's the video Tyler
5 Griffin took. And the allegation is he made a false
6 statement when he said I videotaped the inmate, Mr. Jones,
7 when he escorted him into medical. And we just saw and,
8 in fact, heard the witness say this is the inmate being
9 escorted into medical. So that's the purpose we would
10 offer it for. I don't know yet which witness would be
11 most appropriate.

12 THE COURT: Okay. Well, has the government
13 seen your clip?

14 MR. PATE: Yes. I provided it to them last
15 week.

16 THE COURT: Is there any objection to that
17 clip?

18 MR. CHRISTIAN: I'll have to double check the
19 clip, Your Honor.

20 THE COURT: He says he's not interested in the
21 audio.

22 MR. CHRISTIAN: Yes.

23 MR. PATE: The clip begins literally ten
24 seconds before what we saw and ends about two minutes
25 after it.

1 THE COURT: It sounds like, and I'm not saying
2 you have to, but it sounds like that's something that
3 y'all can work out.

4 MR. CHRISTIAN: Sure.

5 THE COURT: And just tell me what your
6 agreement is?

7 MR. CHRISTIAN: Sure.

8 THE COURT: If not I'll take a look at it. But
9 Ms. Gomez, are you going to get the video?

10 MS. GOMEZ: Yes. I didn't want to call him or
11 talk to him while you're still on the bench, Judge.

12 THE COURT: Okay. So I'm going to look at two
13 clips this afternoon or tonight.

14 MS. GOMEZ: I need to tell you Judge, what I'm
15 sending you is not a clip. It's the video, the entire --

16 THE COURT: Yes, I understand. And your intent
17 was to use the entire video?

18 MS. GOMEZ: My intent was to use the entire
19 video, but I can use it because I understand their
20 concerns about other statements made other than the
21 Defendants here. So we can do it completely silent or
22 completely however the Court sees fit.

23 THE COURT: And doing it completely silent,
24 there are still objections that the government has to the
25 deal as a whole?

1 MR. CHRISTIAN: No, Your Honor. The
2 government's position is the government wants to play its
3 clips with audio because they contain segments we can get
4 in. But statements otherwise that are made in there I
5 think can't come in. So the government has no objection
6 to the video playing, but just without those statements.

7 THE COURT: It sounds like you can use your
8 video and not your audio.

9 MS. GOMEZ: Yes.

10 THE COURT: If you want to get some of the
11 audio admitted then you need to get it to me in the form
12 for me to look at and with some basis for why the audio
13 would be admissible.

14 MS. GOMEZ: Yes, Judge.

15 THE COURT: And I will get a copy of this,
16 Teri, and I'll look at this. So, right now my homework is
17 just Mr. Jarrard's.

18 MR. CHRISTIAN: And to be clear with the disk,
19 Your Honor, I don't believe that we're yet at a point
20 where the defense has established a foundation for it to
21 be relevant and more probative than prejudicial. They may
22 be there at some point, but I don't think we're there at
23 this moment. Subject to cross tomorrow, of course.

24 THE COURT: Right. Okay, well at least I'll be
25 familiar with it. I'm not going to rule on it until I

1 hear more about it but at least I will have seen the
2 video. Anything else to do this afternoon for the
3 government?

4 MR. CHRISTIAN: Not for the government.

5 THE COURT: For any Defendant?

6 ATTORNEYS COLLECTIVELY: No, sir.

7 THE COURT: Thank you all, and thank you for
8 your cooperation with the schedule. The jury is very
9 happy with that schedule, so we will do the same thing
10 tomorrow.

11 (The proceedings for 6-10-2014 were thereby concluded).
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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 I, Tammy W. Fletcher, Federal Official Court
4 Reporter, in and for the United States District Court for
5 the Middle District of Georgia, do hereby certify that the
6 foregoing is a true and correct transcript of the reported
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8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United
10 States.

11
12 Dated this 30th day of August, 2014.

13
14 /S/ Tammy W. Fletcher

15 TAMMY W. FLETCHER, CCR
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